

**EU decision making in the crude oil reserve directive  
Case study into Council directive 2009/119/EC**



**William Thomas Eberle  
317201**

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By

William Thomas Eberle  
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Under the Supervision of: Dr. Markus Haverland  
Second Reader: Dr. Frans van Nispen

Student Number: 317201

## Preface

When I decided on researching this directive for my thesis I was aware that since it was a new piece of legislation I could not count on it having been researched extensively by others, or that many sources would be available as such. I would have to pioneer. I did know that I wanted to research this directive above all others, also because the subject is so multi faceted. It brings together, into one-research paper issues that seem far removed, but in this paper overlap, and are dealt with in close proximity with each other. Thus the subjects of this research were close to home, here in the Rotterdam harbour with its international oil reserve storage, and far away: at a EU level in Brussels and Member States whom border Russia. It deals with European integration as well as with World Politics. It touches on issues of democratic legitimacy and national economic survival through international cooperation, as well as good governance and best practice seen in an international dimension. In the end it was a very cosmopolitan experience without leaving home.

The acknowledgements: Above all other people in the world I thank my mother in all things, it is an honour being family. I also thank my brother. Out of the family realm I thank my supervisor Dr. Markus Haverland for his guidance with this thesis, and his calm perfectionism, as well as for pointing me to some excellent sources that embody this. I come away with a rekindled appreciation for clarity of language and clipped crispness. As Goethe said, he who wants to master a whole must master the details. I also want to thank the people from Speakers Academy, especially Albert de Boijj, Nina Kesar, and Maarten Pino, more than just colleagues.

“Seid nicht scheu und verwundert, daß nun auf einmal erscheint,  
Was Ihr so lange gewünscht. Es hat die Erscheinung fürwahr nicht Jetzt die Gestalt des Wunsches,  
So wie Ihr ihn etwa geheget.  
Denn die Wünsche verhüllen uns selbst das Gewünschte; die  
Gaben Kommen von oben herab, in ihren eignen Gestalten”.

Johann Wolfgang von Goethe,  
Aus Hermann und Dorothea:  
Fünfter Gesang: “Polhymnia. Der Weltbürger”

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## Glossary

BMWi	Bundesministerium für Wirtschaft (German Federal Ministry of Economic Affairs)
BMWFj	Bundesministerium für Wirtschaft (Austrian Federal Ministry of Economic Affairs)
BRIC	Brazil Russia China India
CSE	Central Stockholding Agency (any national Oil Stock Holding Agency)
COREPER	Permanent Representative Committee of the EU Council
COVA	Centraal Orgaan Voorraadvoorming Aardolieproducten (Dutch National Oil Reserves Agency/foundation)
DG	Directorate General of the Commission of the European Union
EEC	European Economic Community (until 31.10.1993)
ECFIN	Directorate General for Economic and Financial Affairs
ECJ	European Court of Justice
ECSC	European Coal and Steel Community (merged with EEC from 1.7.1967 on)
ELARG	Directorate General for Enlargement
EMU	Economic Monetary Union (European)
EP	European Parliament
EPP	European People's Party
EU	European Union (from 1.11.1993 on)
IEA	International Energy Agency
MEP	Member European Parliament
NATO	North Atlantic Treaty Organisation
NORA	National Oil Reserves Agency (Irish National Oil Reserves Agency)
OECD	Organization for Economic Cooperation and Development
OPEC	Organisation of Petroleum Exporting Countries
UK	United Kingdom
UN	United Nations
USA	United States of America
USSR	Union of Socialist Soviet Republics (until 26.12.1991)

## **1. INTRODUCTION**

In sub-chapter 1.1 the problem analysis is introduced. In sub-chapter 1.2 the societal relevance of the research is discussed. This explains why the EU is a complex research subject, while also explaining what makes the EU a relevant research subject for the science of public administration. Chapter 1.3 discusses the scientific relevance. In 1.4 the problem definition is explained. Simultaneously the research question is introduced: where, and with whom lies the power to decide policy? The sub questions and variables contained in this question are introduced. In chapter 1.5 the division and structure of the entire thesis into 6 main chapters is explained.

### ***1.1 Problem analysis***

The EU has become the lawmaker of Europe (Majone 1994). Its institutions constitute a supranational government of Europe. This supranational government of Europe consists of the EU Commission, the EU Council and the EU Parliament. Together these actors make and pass EU legislation (Marks 1996). Each of these three has an autonomous role in the policy making process of the EU (Marks 1996). Analysing the legislative power play between these three institutions can produce knowledge with regards to the balance of power that exists between institutions in EU decision-making. As such this case study constitutes research that is scientifically relevant for the science of public administration. To fully understand the questions that are raised by Marks his statements on the nature of EU government it is necessary to understand the structure of the EU and the functioning of the EU legislative process. Firstly it is necessary to qualify Marks his statements on the nature of the EU.

Marks does not believe that this supranational EU government has supplanted the sovereignty of the EU Member States in a formal sense. That this is not the case is not only because certain policy areas such as defence and foreign policy are still prerogatives of national governments, but also because the EU national governments are directly involved in the decision making in the EU through the EU Council. The centrality of the nation state to the functioning of the EU Council is illustrated by the fact that central to its design is the recurrent meetings by the EU Member States' heads of state and national ministers. It is the national ministers that finally pass a piece of proposed legislation into law in one of the EU Council meetings. In order to assist the decision-making by the national ministers the EU Council has a permanent bureaucracy in place in Brussels that provides administrative support. This bureaucracy consists of national civil servants that are sent to Brussels by their national governments. At the pinnacle of its organisation are the permanent national representatives to the EU Council, all of these are national civil servants. These deliberate on the issues of legislation proposed by the EU Commission. Aiming to negotiate an agreement that the EU ministers in the Council only have to sign. This streamlines the legislative process within the EU Council.

The EU Council thus represents the nation states within the institutional framework that includes the EU Parliament and EU Commission. EU national leaders and governments are thus fully integrated decision makers in the institutional policy making framework of the EU. All this makes that even those sceptical about the ability of Member States to hold on to their power over policy making in the context of the EU policy making process (Marks 1996), concede that: "national governments are formidable participants in EU policy-making"(Marks, 1996, p.343). This does however not change the fact that decision-making power in Europe is now a EU state of affairs (Marks, 1996, p.342).

This is formally laid down in the treaty of Maastricht and the subsequent amending treaties. In which a distinction is made between first, second, and third pillar jurisdictions. All these treaties have come about through the intergovernmental conferences between the EU Member States over the



years. These have resulted in successive amending treaties to the founding act of the European Community via the treaty of Rome in 1957(Official Journal of the European Union 2010). Notable are the Single European Act 1986(Official Journal of the European Union 2010), the Treaty on European Union, known as the Treaty of Maastricht 1992(In effect 1993), the Treaty of Amsterdam 1997(Official Journal of the European Union 2010) and the Treaty of Nice, in effect since 2003(Consilium Europe 2009), and finally the treaty of Lisbon in effect by 1 December 2009 (Official Journal of the European Union 2010).

EU regulations and directives are binding and have the force of law. They supersede the laws made by the national parliaments in the Member States. Moreover national parliaments must transpose EU legislation into their own legislation. The process of getting a EU directive passed by the 3 institutional actors can take many months, or even years. The 3 institutions work like checks and balances, as a proposed directive is revised and amended in the negotiation process.

Moreover it is not uncommon for directives that deal with key policy issues to be overhauled by new directives dealing with the exact same policy matter in ever so many years. The realm of energy security is one of the key areas where EU legislation has been overhauled, only to be replaced with a newer version of that same legislation. Council directive 2009/119/EC is a prime example. It imposes “An obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products”(Eurlex 2009). This newly proposed directive on maintaining oil stocks is as far as the essence of its policy objectives is concerned, an updated version of a number of previous oil stock directives which have been in place ever since the 1973 oil crisis. These also required that Member States keep an oil stock reserve.

By using the power of initiative that flows from being the executive branch of the EU the Commission has become a prolific engine of proposing new directives. It is the EU Commission that kicks off the legislative process by an official proposal for a law (Golub, 1996, p.324§4). The next step in the legislative procedure is a review, and in some cases an approval by the European Parliament. Finally the approval of the EU Council is needed for a law to go into effect. As said the EP its approval is not always necessary, whether it is depends on the legislative procedure that has been chosen by the EU Commission. This is further explained in section 2 of chapter 5. As said the Commission proposes the legislation and then it goes to the EP, finally it goes to the EU Council. These stages between the co-legislators in the legislative process are not formalities, but moments where the proposed piece of legislation can be further developed through amendments. Which of these amendments finally make it into the directive approved by the EU Council is decided through the negotiation process. Through which the final outcome of the directive is decided. In a nutshell this is the institutional, and political, decision making process between the co-legislators. When successfully concluded this constitutes the beginning and the end of the formal decision making procedure in the EU.

It is this spectrum of negotiations and interplay between co-legislators that scientists like Golub, Marks and Moravcsik have studied in order to find out the distribution of power amongst these institutional actors vis-à-vis each other. Their explicit aim for investigating the process of EU decision-making was to gain insight into the actual nature of European Integration. The analysis of the interplay between the 3 institutional decision makers makes it possible to draw conclusions, and from these formulate theories about European integration. These theories can be of a societal as well as a scientific importance.

## **1.2 Scientific relevance**

We ask the scientific question whether the EU is best understood as a system where states are central to decision making, or whether “Power is diffused to supranational institutions at the expense of state sovereignty”(Golub, 1996, p.313).

It is scientifically relevant to add another case study to the body of existing research testing the theories of Neo-Functionalism and Inter-Governmentalism (Golub, 1996, p.314). The hypotheses and scientific theories of European integration constitute models with which political decision-making is analysed in a supranational context (Marks 1996). These two theories are vital instruments for

understanding the EU (Marks 1996). They can however only retain their authoritative validity when they are tested time and again against the latest developments in EU decision-making. Scientists of the EU such as Golub have used a case study of a single directive, to test the validity of “Competing notions of European integration”(Golub, 1996, p.313). Golub did his case study on the Packaging Waste Directive 94/62/EC more than a decade ago (Golub 1996). Seen in this light it is obvious that current case studies into the same research focus can prove relevant just by the merit of keeping the scientific body of knowledge on the subject up to date.

Moreover a vitally important argument for more case studies into decision making power in the EU is the fact that what is proven true for one directive in a specific policy area, may not necessarily hold true for another directive in a different policy area. Furthermore, what was scientifically true at a certain moment in time in the past may no longer be true to the same degree now. Theories such as those on Multi-Level Governance and Neo-Functionalism need to be exposed to as many confrontations with institutional reality as possible: this tests their validity.

This is what is behind the call coming from the scientific community that what is needed are ”Additional case studies of EC legislation”(Golub, 1996, p.313), allowing for the theories of NF and LI to be further tested. This it is expected will contribute more to the scientific understanding of the EU than new elaborations, alterations, or adjustments to the theories on EU integration (Golub, 1996, p.313). Thus it is scientifically defensible to add another case study dealing with an important piece of European legislation to the body of work in this field. In this case it is a case study of the directive requiring Member States to maintain a reserve of crude oil as under Council directive 2009/119/EC.

### **1.3 Societal relevance**

There are two main societal relevant issues to this thesis. The first is the understanding to be gained into the workings of EU government, with all its national and supranational implications. Secondly the strategic crude oil reserve directive is a relevant piece of legislation to society in itself because of its policy objective: ensuring effective strategic oil stock reserves in the EU Member States. It is however the possibility of gaining insight into the workings of EU government that has the most relevance to society at large. As such it is this issue that has the most societal relevance.

It is in the interest of society that its government be held to account. Thus representative legislative decision-making power must be held accountable, both at a national and supranational level. As a policy making power the EU thus too must be held to account. To be able to do this we must first of all identify the institutional decision makers within the EU structure. Then bringing this together with the findings in the conclusion of the research on how prominent a decision-making role in shaping policy each of the institutions plays in reality. In essence: to what degree they are able to maximize their power by having their will prevail over the will of the other institutional players. To be able to gain insight into this it is crucial to understand the processes driving these institutions.

Furthermore to truly fulfil the aim of holding decision makers to account the public policy scientist must research issues that are relevant to society at large. Presenting the research findings in such a way that is understandable to as many actors in society as possible, while still being relevant to policy elites: EU insiders and other governmental actors, in the Member States.

Legislative decision-making - the very essence of government - is more and more carried out at the EU level (Marks, 1996, p.349). Furthermore, MLG has become the reality of governance just as supranationalism is fully integrated into the structure of daily government. If this directly above-mentioned decisional reallocation is indeed the reality, then the EU Commission and the EU Parliament are facilitating a shift of decision making power away from national parliaments and governments to new bodies of decision making at a centralized European level. Then democratic and political discourse must redirect its focus to represent this systemic shift away from the previous centres of government (Marks, 1996, p.349).

By inference the EU Council is the institution most likely to act as a check to this centralising force of supranational executive governance because its will emanates from the Member States. The European Parliament and the EU Commission are pure supranational organisations with no direct allegiance to any member state. If it is in effect the case that the EU Council directly represents the

sovereign will of the Member States, then the degree of decision-making power that the EU Council holds in reality is of extra societal significance because its politics then involve questions of state rights. The degree of state rights in the EU will determine the future level of sovereignty of Member States within the supranational structure of the EU. This has potential implications for national policy and the national polity, as well as for the politics between the institutions in the EU.

### **1.4 Problem definition**

To be able to distinguish to what extent the EU Council decides EU policy. In this case EU energy policy pertaining to oil reserves in the form of EU Council directive 2009/119/EC of 14 September 2009<sup>1</sup>. We must know to what extent each of the institutional actors decides EU policy in the legislative process. Thus we must know to what extent the EU Commission decides the outcome of directives. To what extent it plays out its institutional role as executive legislator, driving its proposals through the negotiation process with the EU Parliament and the EU Council. Furthermore we must find out the degree to which the EU Parliament plays its institutional role in the creation of the strategic crude oil stock directive. The question here is which of the EU legislative institutions has the most decision-making power. All of this can be summed up and phrased in the following research question:

#### **Does the EU Council have more decision making power than the EU Commission and the EU Parliament in the legislative decision making of the EU crude oil reserve directive<sup>1</sup>?**

There is no implied hierarchy between the 3 institutional legislative institutions, apart from particular roles each of them plays according to the legislative procedure chosen to introduce a piece of proposed legislation. The research question is thus designed to scrutinize the individual institutional player by comparing it to the other institutional actors. Out of this understanding of the research question there emerge 4 questions that must be answered: 1. ‘To what degree has the EU Commission shaped the outcome of the final oil stock directive?’ 2. ‘To what degree has the EU Parliament shaped the outcome of the final oil stock directive?’ 3. ‘To what degree has the EU Council shaped the outcome of the final oil stock directive?’ 4. ‘What is the decision making procedure in the EU Oil Stock Directive?’ These questions can be answered through comparing the standpoints of the institutional actors (Independent variables) on the issues (Dependent variables) at different stages of the decision making process, with the final outcome of the oil stock directive. The research will provide the thorough answers to these questions, which when taken together and compared with each other, will be sufficient to answer the research question.

### **1.5 Structure of the thesis**

This thesis is divided into six main chapters. These in turn are divided into sections. Both the chapter and sections have a title referring to the subject that is discussed within it.

Chapter two explains the scientific background of the research through the theoretical framework. The chapter is structured along a comparison between the theories of NF and LI. These two authoritative theories in the science of public administration both make authoritative predictions about the workings of supranational organisations. Both theories also make assumptions about the statecraft underpinning supranational organisations. Each theory is explained in a separate section of the main chapter, thus: NF in 2.2, and LI in 2.3. These sections are subdivided into 3 further sub-

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<sup>1</sup> EU Council directive 2009/119/EC of 14 September 2009: “Imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products”. (© European Union, <http://eur-lex.europa.eu/>. 20 Nov 2010). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:265:0009:0023:EN:PDF>

sections analysing the theories in finer detail. The dichotomy of these two theories allows the scientist to analyse the findings while at the same time also testing the individual theory for validity.

Chapter 3 explains how other scientists have researched case studies with a similar research question concerning the same 3 institutional actors. At the core the question in all these cases was to find out which of these institutions has the most decision making power. Central to chapter 3 is the case study by Jonathan Golub on the EU Packaging Waste Directive. Which is accepted as one of the most authoritative scientific works into the question of the distribution of power between the EU its legislating institutions. In section 3.2 of chapter 3 this method is operationalised to build a method with which the oil stock directive can be analysed. The largest part of chapter 3 deals with the scientific data gathering methods, in 3.3.1, and the sort of data that is required in 3.3.2. It also consists of sections 3.3.3 and 3.3.4, both of which deal with the methods that will be used to conduct the research of the case study.

Chapter 4 explains the Oil Stock Directive as case study. Section 4.1 explains what an oil stock directive actually is in technical terms, understood within the context of the policy objectives in which it is rooted. Section 4.2 explains how energy crises prompted the EU to design a new oil stock directive. In 4.3 the EU Commission Green paper is analysed. This paper is the basis for the EU Strategic Energy Policy. In 4.3 the 6 energy trends identified by the EU Commission are listed and explained.

Chapter five is the actual research part of the case study. Identifying the background of the research, and the actual research findings. It identifies the issues 5.1 that form the heart of the negotiation of the oil stock directive. In sections 5.1.1 and 5.1.2 the actual importance of the issues is explained by showing them in the context of the overarching meta-issues that form their teleological basis of the main issues. In 5.2 the chosen legislative procedure is explained: the Consultation Procedure. Starting at section 5.3 and continuing till section 5.5 the research findings for the 3 institutional actors are introduced. In 5.3 the EU Commission proposal and its standpoints on the issues is explained, which are shown in (Table 1) placed directly underneath section 5.3. This is constituted by their standpoints on the 10 issues identified in 5.1 – constituting the dependent variables in the case study of the Oil Stock Directive. This is the data (Table 1) that makes it possible to come to a conclusion which of the institutional actors was able to get most of its standpoints into the outcome of the final directive, against the will of the other institutional actors. 5.4 Deals with the positions of the European Parliament during the negotiation procedure. In 5.5 the standpoints on the issues of the 27 Member States' are presented. This supplies the data in 5.6 for a quantitative comparison (Table 6) of the 'winners' and 'losers' among the Member States in the EU Council negotiation. To complete the understanding of the weight of each issue to the Member States the issues are weighed by voting frequency in (Table 7). Finally in 5.7 the final outcome of the Oil Stock Directive is presented in (Table 8), which also directly represents the unanimous EU Council agreement on the positions. It is thus possible in 5.7 to come to conclusions about of the research findings, of chapter 5 as a whole. In section 5.7 the quantitative 'winners' and 'losers' between the EU Council, the EU Parliament, and the EU Commission are identified in (Table 9). In this way section 5.7 answers the research question whom has the most decision making power.

## **2. Theoretical Framework**

The chapter on the theoretical framework is distinguishable into 3 main sections, 2.1, 2.2 and 2.3. The introduction is formed by section 2.1 explaining the relevance of a theoretical framework for the interpretation of research findings, while already introducing the subject of the other two chapters by juxtaposing the theories of NF with LI. Section 2.2 explains NF. In sections 2.2.1, 2.2.2, NF's key-concepts are further explained. In section 2.2.3 the theory superseding NF theory is explained: Multi-Level Governance. Section 2.3 then goes on to explain the theory of LI. In section 2.3.1 the LI critique of NF clearly pits the theories against each other, while it also shows the LI critique of MLG. Sections 2.3.2 and 2.3.3 further elaborate on the complexities of Intergovernmentalism.

### **2.1 Introduction theoretical framework**

Extensive research has been done into the EU legislative institutions: The EU Council, EU Parliament, and the EU Commission. Hypotheses have been developed, and tested. Producing the equally authoritative but diametrically opposed theories of NF and LI. Whereas NF expects the outcome of the policy process to be closer to the positions of the EU Council than that of the EU Commission or Parliament, the supranational actors. LI expects the outcome of the policy process to be closest to the positions taken by the EU Council. As this last actor directly represents the combined standpoints taken by the Member States. Both theories make such clear assumptions about their predicted reality that both LI and NF are falsifiable. The authoritative research by Jonathan Golub (Golub 1996) does exactly that. In his research on the Waste Packaging Directive he tested both theories predictions against the reality of EU decision-making. However the research findings for either theory does not support any conclusions refuting the validity of the assertions of the other theory. So that they both remain authoritative along the line of the logic of Karl Popper his adage: "In so far as a scientific statement speaks about reality, it must be falsifiable; and in so far as it is not falsifiable, it does not speak about reality" (Popper, 2002, p.35). Thus we start the research having to accept the contradiction that years of research into the EU institutions along the lines of NF and LI theory has refuted neither theory, and yet at the same time also have shown both theories to be scientifically falsifiable. This results in a situation where there are several valid views of reality about EU decision making, existing at the same time next to each other in a state of juxtaposition. This dichotomy is also one of the main reasons why this case study is scientifically justifiable and needed. The case study into the oil stock directive can serve as another test case with which to clarify which of the theories in this case study is falsified.

The student and researcher of the EU has the good fortune that European integration has been thoroughly analysed within the theoretical framework of both NF and LI. These two well-established theories have developed a remarkable goodness of fit to the subject of European integration, and have been tested against the reality of European integration so extensively that their theories have been constantly refined. LI remains the intergovernmentalist theory of first choice (Cini, 2003, p.108). In the case of NF a new theory incorporating the NF main elements has been established: Multi Level Governance, becoming in the process the authoritative NF theory for studying the EU. No social science can proceed without a theory along whose logic to research and elaborate on findings. So as to permit the researcher to synthesise, and eventually: theorise for himself (Rosamond 2000). LI and NF take diametrically opposed standpoints to such a degree, that Golub concludes that they both speak a different scientific language (Golub, 1996, p.332§2). The friction between their perspectives (Rosamond 2000) is actually a state of near perfect juxtaposition. Resulting from emphasising different aspects of the institutions analysed. Thus when both theories are taken together to analyse a single piece of research they enhance our understanding of EU institutions (Golub, 1996, p.332§2) more then when that piece of legislation is analysed through the prism of only one of the two

theories. This is especially the case for both theories in their research ventures when identifying the 'dimensions' and 'games' (Rosamond 2000) that are crucial to EU integration.

## **2.2 Emergence and creation of Neo-Functionalism**

NF emerged to scientifically describe the process of European integration. The goodness of fit that NF thus has with the EU is the result of the fact that it was specifically constructed to explain European Integration, and to draw further conclusions about the EU from the logic of its constructed theory. NF aimed to uncover and to further build the theory on supranational integration in general (Cini 2003). The project of European state cooperation towards integration was so novel and unlike other developments of the state until then – and now. That not only did there not exist a historical precedent of a comparable management of public affairs, or pursuit of statecraft. There did not exist a scientific paradigm that explained the creation - and subsequent growth - of the European Community to begin with.

European integration was a novel development. This challenged and stimulated thinkers on governance and statecraft to theorize about it extensively. Thus formulating new theories. This started with E. Haas directly theorizing on this new example of states cooperating, in Europe at the end of the 1950s (Cini 2003). Building on Functionalism, Haas crafted the theory of NF to describe European supranational co-operation (Cini 2003). Haas created his theory of NF to explain not only state relations in Europe, but hinted at a global relevance (Cini 2003). This is placed into perspective by realizing he was writing at a point in time of great change as far as the position of the nation state was concerned. It was the time when Supranationalism was a new development, such as exemplified through the creation of the UN and NATO.

“It is also important to recognise the disciplinary and historical context in which work arises” (Rosamond, 2000, p.5). Hitherto existing theories of international relations and governance - Realism, Confederation, and Federalism - were all formed with a specific example of states in existence in mind. As theories they explained the reality of their day. They were not prescribing ideal situations, but describing reality. It is important to realize that when Haas wrote his seminal book *The Uniting of Europe* (Cini 2003) empires that had until then encapsulated state sovereignty in the world in an almost unitary fashion were dissolving, and independent nation states were proliferating. So it was against the backdrop of this unique historical context (Rosamond 2000) of dissolving imperial powers that European integration arose (Economist 2003), and the theory of NF was created to scientifically describe this new development between sovereign states.

However: “Neo-functionalism was mainly concerned with the process of integration only (and had little to say about end-goals. That is how an integrated Europe would look, or should look). As a consequence the theory sought to explain the dynamic of change to which states were subject when they co-operated” (Cini, 2003, p.81). Because of this total identification with the subject of EU integration and the fact that the EU expanded in complexity in every realm, subsequent academic developers of neo-functionalism have constructed an ever more specialized theory.

NF as a result of this specialization has developed into a theory specifically suited for analysing the technocratic and bureaucratic realities of the EU. This despite the fact that its founding fathers set out to construct a generic theory. Out of which they deduced a momentum for supranationalism in all regions of the world (Cini 2003). However NF did not become a theory with global generic relevance (Cini 2003). It became a theory specifically designed for analysing the European Union and EU institutions. This is as stated above an advantage for those whom want to analyse the European Union: because it guarantees a closeness of fit with the subject.

### **2.2.1 Key concepts of Neo-Functionalism: Spillover and Elite Socialisation**

NF has developed the concepts of spillover and elite socialization as its two main conceptions with which to analyse political integration (Cini, 2003, p.85§1). In essence these are hypotheses in their own right. The first crucially important concept of spillover refers to a process where political co-

operation conducted with a specific goal in mind, leads to the formulation of new goals in order to assure the achievement of the original goals (Cini, 2003, p.84). NF distinguishes three sorts of spillover: functional, political and cultivated spillover (Cini,2003, p.85§1).

Functional spillover occurs when policy goals give rise to additional measures being enacted in order to make the original policy possible (Cini,2003, p.84§4). In this way FS is an expansion of the depth and width of the originally intended policy in order to achieve the original targeted policy goals (Cini, 2003, p.85§2). This especially when understood from a legal, technocratic and regulative dimension. This refers to the expansive nature of supranational policies. These become necessary in order to accommodate or overcome many of the unforeseen repercussions and obstacles to a supranational policy objective (Cini, 2003, p.85§2). This is why FS is also called technical spillover (Cini, 2003, p.85§2). No legislator can anticipate all the repercussions that a supranational policy objective will have on an organisation. FS also occurs when bureaucrats fill in the policy details instead of politicians or legislators. This becomes very clear in those cases where technocrats create whole new policies just to complement existing ones, or to achieve intended policy goals (Cini, 2003, p.85§2).

Cultivated spillover is actually policy entrepreneurship by supranational actors (Cini, 2003, p.85§5). Whereby institutions like the EU Commission - that has a vested interest in, and is guided by the logic of integration – push a policy agenda for the sake of the perpetuation of the supranational institution that they are a part of. Once supranational actors are in place they can become a walking wall of politically driven legislative proposals. Designed to relentlessly push the same policy agenda, even in the face of repeated opposition to a specific policy (Cini, 2003, p. 85§5).

Political spillover its key-concept is package deals (Cini, 2003, p.85§3). Political negotiations and trade-offs which are negotiated, and result in linking not necessarily related policy areas together in order to achieve another(Cini, 2003, p.85§3). There are several forms this can take besides package deals on policy. It can develop into a system of mutual favours. Swapping institutional decisions for commissioner posts, and the like. This is the breadth and scale of NF spillover.

The second concept is elite socialisation (Cini, 2003, p.86). This is built upon the concept of socialisation. European technocrats will eventually through work and colleagues be imbibed with the policy goal of the EU as a whole. Since their work literally involves working along the lines of the logic of integration this is EU integration. Which remains the teleological *raison d'être* of the EU project. The idea of a prosperous and peaceful Europe through integration and supranationalism as envisioned by Schumann and Monnet serves as the justification for cultivated spillover among the EU policy elite. A policy elite socialized in the same European idea, and indeed the same interpretation of that idea (Cini, 2003, p.86§2).

### 2.2.2 The EU Commission and Functionalist theory

NF predicts that the EU Commission has the most decision-making power among EU institutions, because of the fact that the EU Commission is the sole executive in the EU institutional framework. It is thus the EU Commission that thinks out and proposes new legislation (Marks, 1996, p.356§4). Not only that but it can amend or withdraw its proposal for a law at any time in the legislative process, as long as the EU Council and the EP have not approved an article of legislation (Marks, 1996, p.356§4). The agenda setting power of the EU Commission allows it to dominate the legislative process and thus the power of decision-making (Marks, 1996, p.356§4). The hypothesis of NF thus is that the outcome of the policy process on the Oil Stock Directive will be closer to the wishes of the supranational actors, the EU Commission and the EU Parliament, than that of the EU Council.

Central to the reason why NF identifies the EU Commission as being the *primus inter pares* among the three legislating EU institutions, as far as influence and decision making power is concerned. Is not only because of the power of agenda setting. NF sees a synergy between the power inherent in agenda setting on the one hand, and elite socialisation and spillover on the other hand. Resulting in the concept of: 'cultivated spillover'.

Furthermore NF identifies the EP and the EU Council as just as much autonomous from the Member States, as the EU Commission is (Marks, 1996, p.343§1). NF thus sees these organisations as working for their own perpetuation first and foremost, and thus as susceptible to the ideals of

“development of supranational institutions and organizations”(Cini, 2003, p.84§2). This again through the key NF concepts of spillover and elite socialization (Cini, 2003, p.85, p.86) NF thus predicts that supranational actors with a supranational agenda will triumph over those actors – including other supranational actors - that represent Member States (Cini, 2003, p.84§2).

The example of Jacques Delors and the 1980s EU Commission is a case study in presuming functional dynamics in the EC. With the EU Commission deliberately tapping into this presumed logic of the system of supranationality by actively seeking cultivated spill-over by creating the Common Market (Hoffmann, 1991, p.12). Which was presumed would spill over through functional spill-over in all other realms of the bureaucracy. Which was hoped would create momentum for such matters as EMU and an integrated European Foreign Policy.

Marks puts forward the theory that the EU Commission can react more quickly than Member States in policy matters because it has a greater “internal cohesion”(Marks 1996, p.360§3, p.365§3). This would also a result of the combination of the long tenure of service and the high level of unique professionalism at the EU Commission. Coming from years of acquired knowledge of issues and dossiers of those working at the EU Commission (Marks 1996, p. 365§3). This in comparison to national - and sub national - politicians and officials, whom have as a result of their relatively brief tenure that they hold office a limited time to achieve a multitude of policy goals. In short: they simply have a higher turn over rate than EU Commission officials, whom can stay on for decades (Marks, 1996, 348§4). This is even more so the case because the EU Commission does not have to stand for re-election (Marks 1996, p. 348§4).

Then there is the case of Cohesion Policy, whereby the EU Commission can act as an arbiter in disputes between Member States. According to Marks the EU Commission its special knowledge and ability allows it to leave its mark on the intergovernmental negotiation process in such cases (Marks 1996, p.365§5). Marks speaks of the EU Commission becoming for all intents and purposes for the duration of the negotiation an extra member state (Marks 1996, p.365§5). Then Marks sees qualified majority voting - by which it is no longer necessary to have a consensus in the EU Council among Member States to pass legislation– as a further enabler of the EU Commission. By making it possible for the EU Commission to actively pursue a cohesion policy because it no longer needs to persuade each and every single member state to vote the way of the Commission (Marks 1996, p.366§2). The EU Commission only needs to persuade a majority of the Member States on the EU Council to come over to its side of the argument.

Finally NF theory sees elite socialisation and spillover creating an environment where all political actors, including national political actors (Cini, 2003, p.86§2), look to the EU level of government as the point of reference for policy creation because of the acceptance of multi-level government as the de facto mode of public administration and an acquiescence with “A European perspective on problem solving” (Cini, 2003, p.86§1). From NF its assertion that national governments will inevitable come to accept that problems must be solved at a EU level (Cini, 2003, p.86§2) must follow that national governments will not be able to resist further decisional reallocation of national powers to a EU level of government (Cini, 2003, p.86§2).

This decision by national governments whereby they as nation states pro-actively empower supranational institution to take over areas of policy making from them can also be understood as a rational decision in the light of high transaction cost associated with complex policy problems (Marks, 1996, 348§2). It can be said that more and more policies are complex because they are designed to serve ever more complex societies and economies. Decisional reallocation, can in some cases possibly be a more or less cynical way of circumventing democracy, by insulating certain decisions from public scrutiny. Or the opposition parties in place in a given country. It can become very difficult to reverse certain laws when the jurisdiction for passing those laws has been ceded to the EU its institutions, thus enmeshing these decisions into EU politics and law (Marks, 1996, p. 348§5). Member States acting thus ‘give’ the EU institutions like the EU Commission power in a specific policy area for a specific reason. One of the prime examples is the case where the EU Commission “was given authority over European mergers” (Marks, 1996, p. 350§1). The Member States gave away power with real clout in the supranational interest of the EU Common Market. The need for a functioning Common Market prevailed above immediate considerations for the implications this might have for national corporations.



The following can thus be concluded about NF: it expects a mutual reinforcing effect between ‘spillover’, ‘elite socialization’, ‘decisional reallocation’ with the agenda setting power which comes from the right to policy initiation by the EU Commission. The end result is an unabashed “policy entrepreneurship” on the side of the EU commission (Marks, 1996, p. 360§2). Making the EU Commission behave as a political actor at times, that shows a willingness to widen its jurisdiction by hook or by crook (Marks, 1996, p.360§2).

### 2.2.3 Multi Level Governance

The theory of MLG is the heir of NF. As a theory it supersedes NF and incorporates the core elements of NF theory (George, 2004, p.108). MLG expects the outcome of policy to be predominantly shaped by supra-national actors, in this case the EU Commission and the EU Parliament. However, unlike NF, MLG does not see the EU Commission as the fount shaping all decision-making in the EU. NF its emphasis on the EU Commission its cultivated spillover is replaced in MLG with an emphasis on the independence and independent decision making of all supranational actors (Marks, 1996, p.342). This also emphasizes the interconnectedness of subnational actors with supranational ones in the policy making process, independent from the interface of the nation state (Marks, 1996, p.346§4). Multi level governance thus identifies policy-making competencies and influence, distributed among actors at different levels (Marks, 1996, p.346§2). MLG significantly differs from NF in that it does not see policy actors as bound in their policy making by a hierarchically stratified institutional structure at an EU level (Cini, 2003, p.120§3). MLG sees policy actors moving in “fluidity” between supranational, “national, and the sub-national” levels (Cini, 2003, p.120§3).

Thus where there is mention of actors in a multi level governance discourse this is not only meant to refer to nation states and government institutions, but also to single individuals within these organisations (Marks, 1996, p.348§1). MLG its core critique levelled at the state centric theory of Intergovernmentalism is that it solely focuses on states, and states’ leaders, as actors (Marks, 1996, p.348). MLG questions to what degree political leaders in the EU context (Marks, 1996, p.348§5) have the interest of their state as their sole priority (Marks, 1996, p.348§4).

Moreover politicians are likely to be replaced sooner than bureaucrats. A fact that makes their policy aims short term, and curtails both their negotiation power and their decision making power in the light of hefty dossiers. Especially when compared with the bureaucrats of the EU institutions. Also it may be the case that politicians reallocate decision-making power as a deliberate policy (Marks, 1996, p.349§4). As already mentioned Marks argues that politicians may seek to transfer decision making to EU institutions to insulate policy making from democratic scrutiny that could reverse policies (Marks, 1996, p.350§1). Siphoning off sovereignty in certain key-areas can thus be a response mechanism to opposing forces or actors in a democratic nation state: “States may be weakened by government elites if they seek to achieve their own policy goals and respond to competitive pressures generated within liberal democracies”(Marks, 1996, p. 350§2).

The above-mentioned government elites must be understood to include politicians and civil administrators at a national and a EU level. At a EU level this definition does not only include such instantly recognisable individual political actors such as MEPs. Government elites as understood by Marks must include all those diplomats and civil administrators that can fundamentally influence the outcome of policy. In the case of the Oil Stock Directive this would mean those administrators within the 3 main EU institutions that influenced the final outcome of the oil stock directive, through influencing the standpoints taken by these institutional actors. Any analysis using MLG furthermore requires that nation states and sub-national actors in the Member States be included in this analysis of policy forming (Cini, 2003, p.120§2). MLG believes that there has been “devolution of decision making competence” to sub-national levels (Cini, 2003, p.120§2). That being said, MLG does still see national governments as important sources of “authority” (Cini, 2003, p.120§2). MLG sees policy forming power residing in the linkages achieved between all these different levels, national, sub-national, and supranational(Cini, 2003, p.120).

Understanding civil administrators as the policy forming elites of government means analysing the role of public administrators through the LI and NF frameworks. This means viewing technocrats

and bureaucrats as political actors insofar as they serve a definite policy goal and shape the outcome of policy. For the influence on and authority over policy is the key concept to defining the role of any given actor. The key question is whether these actors have a political agenda and allegiances of their own, not necessarily shaped by the agendas of the institutions that these bureaucrats serve. NF believes that the institutions shape the bureaucracies they employ, and that policy elites are beholden to the logic of these institutions. Instead MLG sees the dynamic working the other way round also: policy elites also formulate the policy and shape the actions of the institutions for which they work.

Next to the already mentioned MEPs, MLG expects - in this case study into the strategic oil stock directive - that the higher echelon bureaucrats at the oil department of the EU Commission's DG for Energy will have been vital to formulating policy. Furthermore MLG does see those permanent at the EU Council that were involved in making the Oil Stock Directive as influential, including those representatives of the EU Member States. MLG theory does however dispute that this immediately gives Member States any power as such. The same logic that leads MLG to believe that bureaucrats working for the supranational institutions can diverge from the policy goals of their organisations. MLG sees national representatives capable of leaning toward the supranational standpoint on issues, on this point it links up with NF logic. Thus the degree, to which these actors do or do not represent the sovereign will of the Member States, is in itself a test case for the validity of LI and NF.

### **2.3 Moravcsik's Liberal Intergovernmentalism**

Intergovernmentalism presents itself as an account of European Integration along classical realist logic (Cini, 2003, p.103§1). "It is characterized by its state-centrism"(Cini, 2003, p.94). The national interest and the self-preserving impulse of sovereign states are presumed (Cini 2003). Its hypotheses stem from this central presumption: state centrism. LI thus expects the final outcome of the policy process to be closer to the position of the EU Council than that of either the EU Commission or the EU Parliament, as LI sees power and authority presiding with the nation state.

Intergovernmentalism thus has much in common with traditional theories of international relations and diplomacy. Especially realism and neo-realism (Cini, 2003, p.94§3), with their assumption of an international environment where states organize rationally only in pursuit of their self interest (Cini, 2003, p.103§2 & p.94§3). Also interstate co-operation is seen as part of a zero-sum game to gain more control over the affairs of the state vis-à-vis other states (Cini, 2003, p.95§1), and vis-à-vis the citizens of the state (Marks, 1996, p.351§1). Accordingly co-operation amongst countries is only achieved through countries pursuing their national interest, and this in order to enhance state power (Marks, 1996, p.350§4). In the case of European integration, it was the threat of the USSR and Communism that according to LI provided the impetus for the war torn states of Western Europe to form common cause (Cini, 2003, p.96§1). The project is thus interpreted along realist lines of thinking as a new form of the historically well-established traditional alliance, between sovereign states. The economic competition from the USA and the Far East could be another such set of external challenges that will make European nation states decide to band together and not go it alone, and instead work together along the lines that LI theory predicts.

The main point of which much is made in LI theory is that the nation state is still a reality (Cini 2003). This is a key point of LI criticism directly levelled at the NF and MLG assumption that the nation state has forfeited its national sovereignty in favour of a pooled sovereignty at a supranational level. Both theories believe that a nation state that commits to a supranational framework does so out of the necessity to achieve its policy goals(Cini 2003). LI calls this decisional delegation and believes that this reallocation of where decisions are made is first and foremost in the service of nation states (Cini, 2003, p.104). It facilitates their "interstate bargaining"(Cini, 2003, p.104), and obliges the supranational organisation to create the policies that the Member States are asking of the supranational organisation on the demand side of policy(Cini, 2003, p.103). It is in this mode of thought that LI asserts that even in the case of the smallest and most pro-integrationist Member States in the EU state sovereignty of the member state has not been forfeited, nor has it been abrogated because of decisional delegation to centres of EU decision making. Li holds that Member States 'supply' integration in the service of their own interests (Cini, 2003, p.103).

LI thus tries to capture the “interface between domestic and international politics” (Cini, 2003, p.103§2). In the analysis of international politics LI preferences the ‘rational actor model’(Cini, 2003, p.103§2) over the pure realist model that underpins NF. The LI its strict adherence to the ‘rational actor model’ of the nation state (Cini, 2003, p.103§2) also challenges MLG its view of the EU as a fluidity of policy networks where centralised bureaucracy (Cini, 2003, p. 114) play an important role in policy creation(Cini, 2003, p. 120).

Al of this does however not change the fact that the “Preferences” and “Power” of states are the core concepts of both LI and NF (Cini, 2003, p.103§2). However to LI the national interest is a concept so singularly important to its analysis of integration that LI has defined it as a theoretical element under the nomen: ‘national preference’ (Cini, 2003, p. 103§3). This encompasses much more than the NF understanding of the national interest within a supranational organisation, which is also seen as a measure for mutual security and peace. LI sees states as intelligent actors whom use policy allocation to further their economic self interest (Cini, 2003, p.103§2). LI holds that all interstate relations are a continuous strategic bargaining between states, and that this is no different for the Member States in the EU (Cini, 2003, p.103). This is according to LI also still the case when the allocation of policy making has already been fully completed through treaty obligations (Cini, 2003, p. 104§2), which formalise institutional delegation (Cini, 2003, p. 104§3).

LI puts policy formation of national governments at the centre of its analysis. This is in line with seeking to identify the interface between “international and domestic policy” (Cini, 2003, p.103§2). On this there are a number of key-concepts. National preference formation becomes an independent factor in itself in LI analysis (Cini, 2003, p.103§4). This is in line with the state as being the main initiator of policy. Which brings us to the second concept on policy formations in LI. That presupposes that there is a clear “supply” and “demand” side for supranational policy. LI holds that it are the national governments that supply supranational policies, and that is the national polity of a nation state that generates the demand for supra national policies (Cini, 2003, p.103§3). Before discussing the concepts of LI analysis. Much insight into the logic of LI can be gleaned from juxtaposing it with NF.

The difference between LI and NF is that the latter, under the influence of Neo-Realism, sees states in co-operation as solely engaged in a zero sum game to keep the natural state of anarchy under control (Cini, 2003, p.95§2). Along this line of thinking the EU and other international regimes are necessary ‘evils’, and in day-to-day practice theoretically akin to exercises in crisis management. LI believes countries would go it alone if they could achieve all their policy goals by themselves alone.

LI on the other hand sees nation states as intelligent actors whom actively pursue policy goals. Not out of a need to limit damage or out of powerlessness, but with a clear motivation to pursue policy goals with a win-win motivation (Cini, 2003, p.103§3). Moravcsik himself speaks of a “positive-sum outcome”(Cini, 2003, p.104§3). In the analysis of LI the reaching of agreements between Member States on the basis of what for all is a position of common interest - the so-called lowest common denominator -, is a win-win-situation for all countries involved (Cini, 2003, p.103§3). Policy coordination between states under the EU regime is a way of nation states to manage their “economic interdependence” (Cini, 2003, p.21§3).

Moravcsik constructed LI out of earlier models of Intergovernmentalism by incorporating elements of political realism and further augmenting this with elements of neo-liberalist theory (Cini, 2003, p.103§1). Since the EU eventually developed into a political project built around economic integration above all other policies of integration. The infusion of the ‘rational actor model’ was crucial to developing LI into a theory able to explain integration of nation states via economic co-operation (Cini, 2003, p.103§2). Especially so since all integration plans hoping to built integration around Foreign Policy and Defence Policy, like the Fouchet plan of 1961, failed to materialize from the 1960s onward (Cini, 2003, p.21§3). It eventually were the European Member States whom pushed economic integration (Cini, 2003, p.103§2). The economic interdependence for purely strategic reasons such as under the ECSC from 1951 gave way for economic integration for the sake of economics as much as for integration’s sake by itself. This set Europe on the path of integration of the sort enacted under the Maastricht Treaty in 1993(Cini, 2003, p. 299§2) with the completion of the common market with EMU. In which the logic of economic efficiency feature as large as such considerations such as peace and stability through economic interdependence (Cini 2003).

National preference formation is LI its redefinition of the national interest. Decoupling the national interest from classical realist theory, where states are engaged in the politics of survival in a Hobbesian anarchic world. LI redefines the national interest into a theory by which the national interest of the state is defined as the interest of its polity and the dominant groups within its society (Cini, 2003, p.104§1). Because Intergovernmentalism puts policy formation of the nation state at the core of its analysis (Cini, 2003, p.103§2), the concept of the national interest is automatically at the forefront of its analysis. It is to the credit of Moravcsik as a scientist that he conceptualized the way LI theory understands the national interest. Which is quite revolutionary in that it places foreign policy formation at the demand side of national politics. Whereby the demand for policy by powerful actors in the national polity such as corporations and business interest, petition their national governments to create international regimes to serve their interests (Cini, 2003, p.104§1).

The LI theory of interstate relations is part of the realist strand of Intergovernmentalism, in that it sees the nation state as a unitary player whom is defined and appraised in its relationships with other states by its 'power' (Cini, 2003, p.104§2). The international regime of the EU with its supranational institutions is understood as an act of institutional delegation (Cini, 2003, p.104§3). The supranational institutions exercise powers delegated to them by the sovereign power of the nation states only in order to hold Member States to account among themselves. According to LI supranational institutions do not become sovereign themselves through their actions, but are solely there to solidify and administer the treaty obligations that Member States have agreed upon among themselves (Cini, 2003, p.104§2). Thus the role of the central EU institutions is to create certainty for the treaty partners that the sovereignty they have invested is honoured through the pursuance of the agreed upon policy goals, that form the teleological underpinning of the Intergovernmental cooperation (Cini, 2003, p.104§3).

### 2.3.1 Intergovernmentalist criticism of Neo-Functionalism.

Stanley Hoffmann is one of the scholars whom began further developing Intergovernmentalism as a theory through structurally criticising the NF description of the EU: Stanley Hoffmann "His Intergovernmentalism rejected neo-functionalist theory"(Cini, 2003, p.97). Hoffmann his claim was that NF by concentrating solely on the process of European integration "Had forgotten the context within which it takes place"(Cini, 2003, p.97). Hoffmann aimed to debunk the functionalist view on European integration. Which he held for outdated - and therefore falsified - because it failed to predict the future dramatic developments of the European project (Hoffmann, 1991, p.9). Hoffmann saw this as a major failure of NF because functionalism ought to have been able to predict the development of the system whose blueprint it claimed to capture. "As this expansion and strengthening of the community continues, it will become increasingly important for scholars to understand its origins and dynamics" (Hoffmann, 1991, p.9). He then argues to discard 'such loaded' functionalist terms such as "spill-over" and "supranationality" (Hoffmann, 1991, p.9), which of course are key concepts of the theory of NF.

Furthermore and without referring immediately to Hoffmann, it can be argued that NF its logic of elite socialization (Cini, 2003, p.86) does not take democracy at face value when it expects the EP to behave as the natural ally of the EU Commission. As the EU elections of 2009 for the EP have shown, national preferences of voters are bound to show up in the European Parliament. Such democratic 'national' political movements may even be adverse and downright opposed to: 'More Europe'. At the end of the day voters might still very well command more loyalty from MEPs than the influence that is exerted by elite socialisation in the corridors of Brussels. This simply because politicians rooted in particular nation states – such as MEPs are by being elected on a national basis – cannot entirely pull loose of the will of the polity in a particular member state without jeopardizing their re-election. Under the current election system of the EP voters are likely to reward politicians whom remain in touch with the nation state and its interest. As the withdrawal of the British conservatives from the EPP faction has shown: national political cultures exert a stronger pull than elite socialisation now and then (Cini, 2003, p.98§5).

### 2.3.2 Intergovernmentalism and actors of integration

LI believes that the agenda setting power for EU integration is derived from the nation state. LI sees this borne out by the way EU integration developed, because only when nation states supported integration was it facilitated. In other words: 'it happened'. However, whenever the EU Commission or other government actors pushed for integration without the full backing of nation states, integration stalled.

The Franco-German Axis is further proof of LI its theory on interstate relations. It is also proof of LI its believe in 'interstate bargaining' (Cini, 2003, p. 104§2). In accordance with LI theory it were the bigger, 'powerful' countries (Cini, 2003, p. 104§2) that shaped integration. According to LI logic the two biggest founding member countries of the EU, France and Germany, set the pace and decided the agenda of integration over the course of the last 50 years. It was their preference formation that saw to the development of the EU (Cini, 2003, p.104§2). The Franco-German Axis exemplifies LI. The Franco-German axis first and foremost means Franco German interdependence and cooperation, but not federal union (Hoffmann, 1991). This shows that it is neo-realist considerations by sovereign nation states that drive European integration (Cini, 2003). The European project thus understood, is an instrument for institutional delegation (Cini, 2003, p.104§3). Whereby the national governments of the Member States have agreed to commit to a common supranational regime(Cini, 2003, p.104§3) in the service of their own strategic interests(Cini, 2003, p. 105§2). This confirms the rational choice paradigm component of LI (Cini, 2003, p.102§2). The largest countries provide the critical economic and strategic mass to EU integration, while simultaneously providing through the weight of their numbers of citizens democratic legitimacy to the entire EU project. The fact that something such as the Franco-German Axis exists outside of the official institutional structures of the EU confounds NF presumptions. Moreover its semi-formalised nature confounds MLG expectation of fluidity among different government tiers (Cini, 2003, p. 120). The measure to which it has actually played a role in EU integration seems to shows that the functionalist paradigms of NF and MLG are an incomplete description of reality. For it is still widely accepted that as soon as either France or Germany significantly changes their stance on EU integration, that the project of European integration would start to change along with it.

### 2.3.3 Intergovernmentalist theory on the EU Council

According to LI the EU Council retains its place as the key decision making institutions in the EU. National leaders bring their national legitimacy and sovereignty to the table in the EU Council, and pool it together. The approval of the EU Council is a sine qua non for any legislating in the EU. The EU Commission cannot bypass the EU Council. This is one of the reasons why LI expects that the policy outcome of the majority of legislation will be closer to the position of the EU Council than that of the EU Commission or EU Parliament. The nation states in effect decide the outcome of the legislative process through the EU Council. The EU Council is in effect - whenever there is a meeting of the ministers of the Member States in the Council - literally the intergovernmental body of the EU Member States. By this it directly represents Intergovernmentalism within the institutional design of the EU.

The EU Commission is the executive branch of the EU, having in the formal sense of the law the sole right to propose new legislation. The qualifying remarks on the executive role of the EU Commission are made here because this right to propose new laws is not solely at the discretion of the EU Commission itself. The EU Council can invoke a right requesting the EU Commission to draft a legislative proposal (Marks, 1996, p.357§4). Thus the EU Council has the option of forcing the EU Commission's hand at any given time. Moreover, Member States make use of this right also by introducing to the EU Commission worked out drafts for new laws. This mostly occurs when a given country presides over the EU Council (Marks, 1996, p.357). The EU Council can furthermore come to agreements, resolutions and common opinions, all of these are instruments to make known its legislative will and intent by which the EU Commission can be persuaded, or even cajoled, into legislating (Marks, 1996, p.358§1).

Hoffmann thus sees the diplomacy and politicised dealings and meetings between EU Member States as playing a crucial part in EU integration. This is even the case where bureaucrats come to agreement among themselves such as in the EU Council at the Coreper level - without national political figures having to interfere to foster agreement. For being national representatives such an agreement can be assumed to be made with the taciturn approval of the member state its sovereign government. Furthermore national governments are informed on proceedings of legislation at the EU Council through their own national bureaucrats. National parliaments are also informed, of the subjects pending for discussion and agreement in the EU Council. The permanent representatives of the member countries are after all is said and done, first and foremost national bureaucrats. Structurally then, “The kind of entity that is emerging does not...much resemble the sort of entity that the most enthusiastic functionalists and federalists had in mind. For they envisaged a transfer of powers to institutions whose authority would not derive from governments of the Member States, and a transfer of political loyalty to the center” (Hoffmann, 1991, p.12). These NF and federalist visions of the EU would have meant having a federal European state where sovereignty would come to reside with the centralized federal institutions of that European state, and not with the EU Member States or their citizens as such (Hoffmann, 1991, p.9). The institutions that NF sees as representatives of EU federal sovereignty are the EU Commission and EU Parliament (Cini, 2003, p.87). Of these actors the EU Commission is seen as the most important because of its role as ‘political entrepreneur’ pushing for ever closer European integration (Cini, 2003, p.87

### **3. Research Design**

This chapter analyses the authoritative cases study of the Waste Packaging Directive by Jonathan Golub in 3.1. In 3.2 the plan to analyse the strategic Oil Stock Directive in a comparable way is explained. In 3.3 the method for findings facts and data, as well as the scientific justification, based on the authoritative work of Robert K. Yin in the field of case studies is analysed. The sub-chapters 3.3.1, 3.3.2, 3.3.3 and 3.3.4 scientifically justify the various sorts of data collection, as well as identifying the key people for the interviews on the issues.

#### ***3.1 The EU Packaging Waste Directive by Jonathan Golub***

In his research of the EU Waste Packaging Directive scientist Jonathan Golub crafts the juxtaposition of NF and LI into a research tool, with which to measure the decision making power of the EU supranational actors against that of the decision making power of the EU Council (Golub, 1996, p.315§2). The encompassing logic of this method to analyse the power and influence of the EU its supranational institutions allows for a better analysis than using either theory by itself (Golub, 1996, p.315§2). In the 1994 EU Packaging Waste Directive - Directive 94/62/EC - Golub sets out to simultaneously test the points of legitimacy of both NF and LI (Golub, 1996, p. 315§2). The conclusions about Community institutions and their influence on the final outcome of directives that this method allows Golub to arrive at are precise and clear. Through showing to which of the institutional actors standpoints the final Waste Packaging Directive came closest, Golub was able to conclude and reflect on the measure of power of each actor.

However, by using both NF and LI for his analyses Golub was also able to clarify whether it is LI or NF logic that describes the reality of power between the EU institutions most accurately. Golub did however not slavishly employ the theoretical elements from LI and NF to test decision-making influence, but instead asked who has the most 'Power'. This touchstone of asking whom has the most 'Power' was operationalised by Golub by testing it against the purported institutional power of the EU Commission as a policy entrepreneur, a central element of NF.

Golub speaks of the EU Commission its power in the terms of its objectives (Golub, 1996, p.325§3). By asking this question Golub does not take the Commission its agenda setting at face value, but tests whether the EU Commission in its role as executive power is a successful policy entrepreneur (Golub, 1996, p.324§4). This should make it possible for the EU Commission to pilot proposed directives through the negotiation process to final approval as little amended as possible. This should finally result in a directive in which the most important policy objectives that the Commission proposed it with are maintained (Golub, 1996, p.324§4). If this is not the case, then this means that the Commission does not translate its agenda setting powers into power. This criteria used by Golub is a very straightforward method to test power. It also immediately puts into perspective the much-vaunted worth of the influence on policy that is ascribed to the EU Commission its role as policy entrepreneur (Golub, 1996, p.325§1). Golub his conclusion is that influence, however impressive, does not translate into power (Golub, 1996, p.325§3). Golub identifies power as the most scientific reliable method to analyse the legislative roles played by EU institutions (Golub, 1996, p.336§6). It is this method and research question used by Golub that is also the lodestar for the formulation of the research question in the Oil Stock Directive as here researched, with its use of the level of decision making power as the defining research question.

As far as the level of power by each Community institution is concerned the test of the pudding is in the eating. Jonathan Golub established the winners and losers in the Packaging Waste Directive by establishing which Community institution got most of what it wanted, in the recycling targets agreed in hard numbers. These were the the policy goals of the different actors, and thus the issues of the Waste Packaging Directive. In the proposed packaging waste directive the EU

Commission had the objective of achieving legislation with a recycling rate of 60%, and a recovery rate of 90% of all materials, while giving the member countries 10 years time to meet these targets (Golub, 1996, p.320§2). When directive 94/62/EC was finally enacted it had “Flexible and less demanding targets” (Golub, 1996, p.322§1). Furthermore notwithstanding the fact that countries were only given 5 years instead of the proposed 10 years to comply with the directive, the overall targets in the final directive were lower. As a test of the power of the EU Commission it is telling that the proposed recovery rate of 90% eventually became a recovery rate of 50-65% (Golub, 1996, p.322§1). The objective of the EU Commission on recycling had initially been 60%, but ended up becoming a target of 25-45 % (Golub, 1996, p.322§1). As far as the minimum-recycling rate for each type of material is concerned: this became 15% instead of the proposed 40% (Golub, 1996, p.323). Leaving Golub to conclude that: “Despite the window of opportunity for a packaging waste directive, the Commission... failed to secure most of its original primary objectives” (Golub, 1996, p.325§3).

Golub does not fall into the trap of NF as seeing influence as a guarantee to decision-making power. Instead Golub places the burden of proof for institutional power on the EU Commission. The Commission must prove that it has power by seeing its policy objectives turned into directives. The failure of the EU Commission to shape the outcome of the final directive leads Golub to identify the EU Council as ultimately the most powerful institutions (Golub, 1996, p.336§4).

By inference the EP is deemed powerful if it can get proposed directives amended to a substantial degree. Measuring the power of the EP is with Golub thus a matter of comparing its proposed amendments with the number of amendments that were finally adopted. The EP committee on the environment “put forward 79 amendments” (Golub, 1996, p.320§4). An impressive number were it not that the EP did not adopt them because it was conscious that the EU council would not accept them. Accordingly and due to the EU Council its original opposition, the amendments were reduced to 38 in the second proposal (Golub, 1996, p.322§2). In the end: “Each of these proposed amendments failed to gain sufficient support in the European Parliament (Golub, 1996, p.322§2). Leading Golub to conclude from this directive that the European Parliament has no clear decision making power.

Golub also tests the validity of MLG by testing it against the level of state centrism. Golub does this by testing the degree to which QMV produces outcomes: “which are above the lowest common denominator” (Golub, 1996, p.314§2). His conclusion is that QMV always produces losers among the Member States. In the Waste Packaging Directive these are, Germany, the Netherlands and Denmark (Golub, 1996, p.315§3, p.322§3). Golub concludes that state centrism as such is not in the ascendancy, this despite the fact that the EU Council carried the day. His reasoning is that even though the directive showed hallmarks of being a lowest common denominator outcome. Member States’ state-centrism cannot be maintained because it eventually was a coalition of a majority of the Member States whom negotiation the lowest common denominator agreement. “The UK, the less developed Member States – Spain, Ireland, Greece and Portugal – and to a lesser extent France and Italy favoured a lower recovery target and the omission of binding recycling targets for each type of material. Taking the initiative for this group, the UK proposed dropping any mention of recycling” (Golub, 1996, p.321§3). Golub sees this as a defeat of state centrism because it produces clear losers, namely the countries wanting to pursue more ambitious programmes (Golub, 1996, p.332§3).

It must be noted though that this line of thought by Golub is not about institutional power as such, as it is about state power and the national interest in its purest LI interpretation. This can be seen this way because it was the institution of the EU Council that carried the day. Moreover it was the QMV agreement among the Member States that blunted the ambitious policy proposals of the Commission and the repeated deliberations and proposed amendments of the EP “Having survived two readings by the European Parliament, all that remained between the proposal and its adoption was a vote in Council” (Golub, 1996, p.322§3). Furthermore it also showed that though a single country cannot veto a consensus reached between a majority of the other countries, it also showed that even small countries like Belgium can stand up for their national preferences in the Council. As they are in fact willing to de facto veto a majority when the votes among the nation states are in the balance. “Britain, which had also threatened to defect, was equally satisfied that the proposal would not allow national economic instruments which distorted the market” (Golub, 1996, p.324§1). All of this would still allow some to conclude that the outcome of the final directive is closer to the positions of the Member States than that of the supranational actors.



### **3.2 Method of analysis of the strategic oil stock directive**

The method of analysis followed in this case study follows the method developed by Golub in the Packaging Waste Directive. The analysis used by Golub is built on comparing the proposed content of a directive with the end result of that final directive. In the Oil Stock Directive we ask the same question by comparing whether the final outcome of the directive is closer to the EU Council its standpoints, or closer to the standpoints taken on the issues by the EU Commission and EU Parliament. The standpoints taken by the institutional actors are the variable issues in this case study.

Jonathan Golub established the winners and losers in the Packaging Waste Directive by establishing which EU Community institution got most of what it wanted in terms of policy goals, comparing initial positions of institutional actors with the final outcome of the Packaging Waste Directive. The approach of the Oil Stock Directive is similar to such a degree that the research question: of whom has the most decision making power can be answered in a similar fashion as in the Packaging Waste Directive.

The institution that achieved most of its policy objectives has the most power. This is sequential pattern matching because the outcome of the ‘winner’ in the Packaging Waste Directive is matched against the predictions of NF and LI theory on which institution is expected to have most power (Yin, 2003, p.116§2). In the case of the packaging waste directive this was achieved by juxtaposing the various proposed levels of recycling and waste recovery as proposed by the different institutional players in the various draft and negotiation stages (Golub, 1996, p.319), and comparing these with the eventual levels of recycling and waste recovery agreed upon in the final directive.

The analysis in the form of the study of transforming positions happens in “sequential stages” (Yin, 2003, p. 123§3). By comparing the positions of the EU Commission, with those of the EU Council and the EU Parliament on the issues of the directive (The proposals, that can be seen as more or less contentious issues between the actors). As said the comparison between the initial positions held by each institutional actor with the positions of the final directive, reveals which institutional actor got most of what it wanted through the legislative negotiation process. Thus having the most power of all 3 institutional actors (Golub, 1996, p.336§6). The changed positions are phases during the negotiations and correspond with changed with key-decision making moments (Yin, 2003, p.123§3). For example the votes at the EU Council and the EU Parliament(Yin, 2003, p.123§3).

The study by Golub shows that it is important to identify the issues of the directive and collect chronological data on the decisive moments during the negotiation of the directive, moments of decision on the issues for each individual institution. The initial positions of the EU Commission and the subsequent positions of the EU Council and the EP form the beginning of the process of policy creation. The initial proposal of the EU Commission constitutes the beginning of the comparative analysis.

The Oil Stock Directive will be analysed along similar lines as Golub his study of the Packaging Waste Directive 94/62/EC, in describing each stage of the negotiations by positions, communications, official standpoints on the issues, consultation of committees and working groups, amendments made, and this for all parties involved: The EU Commission, the EU Parliament and the EU Council. Doing this along the lines shown by Golub focuses the analysis on the actual power brokering in the negotiation process.

### **3.3 Data gathering, documentation & interviews**

The research of a case study is singularly about finding and collecting facts (Yin, 2003, p.83§1) that are relevant to answering the research question. So as to produce what Robert Yin calls: ‘evidence’ and ‘data’ for further case studies (Yin, 2003, p.83§1§2). These data must be scientifically reliably obtained (Yin, 2003, p.83§1). Because the data is the evidence on which everything else rests.

A single case study requires different sorts of data corroborating the same fact (Yin, 2003, p.101§2). This because the single case study is not placed into perspective by comparing it to other cases, in this case other directives. Objectivity and internal validity must come from an all round understanding of this single case alone. The data must be unambiguous and relevant because it is the only data by which to verify the facts about the single case study. Diversified sources and different kind of data ensure scientific integrity and validity of the conclusions drawn from them (Yin, 2003, p.101§2).

3 sorts of sources of data are appropriate for the case study of directive 2009/119/EC. These are as identified by Robert Yin: *documentation, archival records, and interviews* (Yin, 2003, p.85§3).

Documentation is essential in any case study (Yin, 2003, p.87§3). As far as data goes, documentation and archival information available from official EU sources is reliable and extensive. The data, both from archival and documented sources, draw the outlines of proceedings and the sequence of events: chronologies (Yin, 2003, p.125§4). These public records concern themselves with statements of objective fact: the various stages of the legislative process, the outcome of votes, and the provisions of amendments. All these data sources are accessible. They are also factual and reliable. For documents that accompany the legislative process, the EU institutions and in a lesser degree Member States governments will be the main source (Yin, 2003, p.85§3, p.86). Even though data sources such as memoranda, communiqués, staff working documents and various other such internal documents are indispensable sources for the data gatherer. These sources must however not be presumed to be the complete data by themselves. Even when sequential they may omit events and opinions, or may have been extensively edited (Yin, 2003, p.87§1). The legal service of the EU: Eurlex will be an indispensable source for studying European Treaties. The EU Prelex service will be an indispensable source for acquiring all the working papers, especially with regards to the initial proposal. Through Prelex it is possible to follow the inter-institutional progression of proposed legislation. The official standpoints taken by the EU Commission, the EU Parliament, and the EU Council can also be drawn from Prelex. This is indispensable factual information that is objectively immutable. The entire legal timeline of legal proceedings between the 3 institutional actors is available in this way through Prelex. Furthermore the official communications of the various institutional actors are also relevant sources to consult.

Further sources of documentation must also be considered: newspapers (Yin, 2003, p.86), and other publications by organisations outside of the EU. The reason that validates using all these extra sources is that they allow us to corroborate data by triangulating the information of the EU institutions with outside sources (Yin, 2003, p.87). This is the process of turning data into ‘evidence’. In the packaging wage directive by Golub the data and evidence are the proposed levels of recycling and wage recovery. In the oil directive 2009/119/EC the first proposal by the commission as published by the commission will include every relevant piece of initial data. This is however not evidence, but just data. The context of data, the ‘evidence’, must also be gathered. This can be drawn from documentation and the timeline of the release of information.

The interviews conducted with representatives of the institutions and national representatives are essential because much of the negotiations are not transmitted, and are informal. The standpoints taken during the negotiation process can only be gleaned from the sort of changes made to the proposals in the sequential negotiation process. Interviews are indispensable in this regard. An authority on case studies, Robert Yin considers the interview “one of the most important sources”(Yin, 2003, p.89). Data cannot describe how negotiators weighed and traded proposals, and what they assessed in their own minds to be vital interests. Serious negotiators - whether individuals or institutions - will identify the trade offs they made during the negotiation process, and present them as win-win situations or at the very least as a decent compromise. This despite the zero-sum logic

scientist such as Golub accord to negotiation processes (Golub, 1996, p.314§2). Nonetheless the triangulation of interview data with data from other sources will produce a clear picture of the standpoints taken during the negotiation process, and the importance of various negotiated positions.

Questionnaires. The questionnaire is a test and tried method of obtaining data, especially for obtaining data suitable for comparative analysis. The questionnaire used has the exact same 10 closed and open questions that served as the checklist for the interviews. The questions solely relate to the positions held by Member States on the issues. The questionnaire is not quantitative in the strictest sense of the word, because it is not used as a basis of a statistical comparison of data. The questionnaire is part of the structure of each of the interviews, and was solely used to uncover the standpoints of individual actors with regards to the issues. The were part of each interview taken and gave structure to the individual and disparate interviews, of many of the interviewees, while as a same time also backing up the data of the interview with comparable factual answers. Thus: for or against, yes or no. In those cases where direct interviews could not be obtained or were declined for whatever reason, the questionnaire served as a fail-safe method for obtaining the minimum required information on the issues. The lower threshold of the questionnaire resulted in a very high answering rate.

### 3.3.1 INTERVIEWS AS A DATA GATHERING METHOD

The need for interviews is greatest where the exact standpoints on the issues during the negotiation process has not been made public, and also cannot be gleaned from public documentation on the matter. Interviews are most needed and most justified as a source of information where institutions have the most closed off negotiation processes. Within the EU many actors do not release negotiation positions for the public record, but choose to keep information under wraps within a closed off sphere of technocrats. This may or may not be 'sensitive information' (Haverland 1998) to the parties involved. This perceived sensitivity is however subjective to the interviewed party, and possibly to third parties involved in the negotiation process. This subjective understanding of the sensitivity of the nature of the information is however not a criteria of concern to the understanding of the data for this case study as such. Only in as much as such non-filtered data can be expected to give a true account of the standpoints taken, and the salience of the issues to the negotiation parties.

The justification for conducting an interview is first and foremost because in some cases it remains the only method that can supply certain data that are crucial to answering the research question. In this case study the main criteria for justifying an interview as a data source. Is that the interview is conducted in order to find the undisclosed standpoints of any of the identified actors, involved in the decision making process in the Oil Stock Directive. This makes it plain that not all interviews are equal.

Thus it becomes clear from comparing the nature of the negotiations in the European Parliament with the EU Council that the justification and need for interviews is apparently greater with the EU Council. The EU Council is to a greater and lesser degree secretive, with a non-public vote and negotiations. The European Parliament however has as open proceedings, as well as open debate in the chamber. Furthermore the EP discloses its votes, per individual Parliamentarian. As far as the Commission is concerned its initial standpoints provide a very clear view of its standpoints. Furthermore by being a more unitary organisation, fewer interviews will suffice, as long as they are with authoritative sources.

### 3.3.2 CONDUCTED INTERVIEWS & INTERVIEWEES

Interviews were conducted with officials from the EU Commission and the EU Council. Most important of all the interviews were the sequence of interviews with the EU Council its permanent representatives from the Member States. This also included a number of the national representatives of member countries' ministries, and other institutions directly involved with negotiating the Oil Stock Directive on behalf of their country. Thus the following list of interviewees emerged for each

institution. In the case of the EU Commission the main interview was conducted with a key representative responsible for oil policy at the oil policy department of the DG of energy and transport. Since the European Parliament vote is known there was no immediate need to conduct interviews with MEPs. One European Parliamentarian was interviewed to provide some background information on the proceedings in the EP Parliament. This interview was so informative with regard to background information that it turned out that not many more were needed. The need for interviews was greatest with the representative of the EU Commission and the EU Council, where votes take place behind closed doors.

For the EU Council one of the most fruitful interviews was with the representative for the EU Council as a whole in the field of energy, whom also presided over the negotiation process in the EU Council working group on energy. A fair number of the member state chief negotiators for the Oil Stock Directive agreed to be interviewed, and consented to the data being used for this research. The data provided by them on the standpoints was in almost all cases invaluable, and in some cases very informative with regards to the negotiation process as a whole. In those cases where a country heavily involved national experts from the national ministries, a number of national bureaucratic administrators that were closely involved in the negotiation process on behalf of their own country were also interviewed. In the case of Germany this was an expert from the German Ministry for the Environment and Technology (BMWi), under whose portfolio energy policy resides. In the case of Ireland 2 interviews were conducted, the first with the permanent representative for Ireland in Brussels for energy matters, and the second with a representative of the Irish government controlled Oil Stock Agency (NORA), responsible for maintaining Ireland's oil stocks.

The final list of conducted interviews thus consists of representatives from the EU Commission and the EU Council, as well as the one MEP whom was very forthcoming with information. Further interviews were conducted with Member States' permanent representatives to the EU Council, as well as a number of Member States their chief negotiators in the Oil Stock Directive. In some cases the request was reversed back to a national level in the member state, to a national bureaucrat with authority over national oil stock policy. These were mostly answered by questionnaire, though a number of these national technocrats were willing to give an interview. As said the EU Commission representative interviewed was at the time of the negotiation of the oil stock reserve responsible for the policy section Coal and Oil of the EU Commission DG on Energy, which is the department whom presided over the Commission its proposal of the Oil Stock Directive. Furthermore an interview was conducted with a representative of the EU Council whom presided over the negotiation process in the working groups conducted at the Coreper level. Both of these interviewees whom agreed to be interviewed were very frank and outspoken, and thus very helpful to this research.

Finally it is noteworthy that of the 27 EU Council Member States approached, 20 responded by communicating their initial negotiation positions; their standpoints on the issues. France declined, as did Rumania in the end. Germany and Austria sought detailed feedback from their respective energy ministries back home, as already referred to in the above stated text. The two countries national representatives chose to answer a questionnaire only. Portugal did the same. In the rest of the 17 cases it was sometimes still possible to get in touch with the actual negotiator of the Oil Stock Directive, though these were often no longer working in Brussels. In all the cases that a permanent representative – always one knowledgeable on the directive and its country's stance as well as on energy policy in the EU - answered the questions contained in the questionnaire, this was with the exception of Portugal done through a direct interview with the researcher.

### 3.3.3 THE CRITERIA FOR THE CONDUCTED INTERVIEWEES

The main criterion for selecting the interviewees chosen in section 3.3.2 was their level of involvement with the negotiation process of the Oil Stock Directive. This is dictated by the scientific need that the interviewees can give accurate information on the standpoints of particular actors on the issues. Thus to be credible sources of information the interviewees must have either direct access to the standpoints taken on the issues, or first hand knowledge of these. Thus in this case one of the following 4 hallmarks mark one out as a credible interviewee: 1. Directly involved in the negotiation process - as a negotiator or an observer, 2. The interviewee was briefed on the negotiations, or 3. Has the authority to

request information on the issues by merit of holding a higher administrative position in one of the involved organisation. Such as officials working for the national ministries - involved with the policy area. Added to this must be a basic level of knowledge and understanding of the Oil Stock Directive, preferable when seen within the context of the negotiations. A fourth criterion is the level of authority that the institution in question has bequeathed on the functionary in question, which allows the official to make authoritative statements with regards to the institution its official position. This last criterion ensures that each statement made, is made in an official capacity, and not as an opinion in a private capacity. It thus authoritatively reflects the positions of the institution, allowing it to be taken seriously.

The reasoning behind these criteria is as follows: knowledge in the context of the decision making process can be equated with knowledge of the negotiations as they unfolded, and knowledge of the issues in the negotiation process. This also relates to understanding the saliency of the issues. The negotiation process itself reveals how salient issues are to parties. EU negotiation processes take place behind closed doors, and there is no access for either the public or the press. The public domain is kept out of the negotiation processes of the EU, notwithstanding freedom of information provisions it is the institutions that control which knowledge is communicated to the outside world. The people with knowledge on the negotiations are thus by definition people with inside knowledge, and first hand knowledge. For them negotiations along the lines of the negotiations on the Oil Stock Directive is day-to-day professional practice. They have real access to institutional knowledge, because they understand the context, and the organisation. This group – as already stated - will consist of technocrats within the institutions, or experts called in by their national governments to assist with the negotiation process. This includes officials concerned with oil policy in the national bureaucracies of the member countries.

Decision making power in the context of the negotiations must be understood as the power to negotiate: to change or maintain the form of the directive, or simply to voice an authoritative opinion during the negotiation process.

The EU Council is not a unitary entity with one official standpoint. Since it is not a centralized entity in itself but instead a talking shop and negotiation chamber for 27 EU Member States. All of who have their own positions on the issues, along the lines of LI logic (since all have their own national interest). This makes the EU Council the most divergent of the 3 institutions. Given this divergent nature of the EU Council, scientific validity requires that, as many Member States' positions in the Council are uncovered as possible. The above section 3.3.2 shows how this was done.

### 3.3.4 ANALYSING THE INTERVIEW DATA

Diplomatic fudge, circumspection, subjectivity and sour grapes are to be presumed factors when interviewing officials whom represent institutional and national interests. Furthermore there is the possibility that officials have various lobbying interests on the side from the business world.

These factors could erode the objectivity of the data gathered or could hamper the analysis. The reliability can however be guaranteed by triangulating and cross referencing the information from the interviews, and by comparing them. This is also the method to draw a clear picture of events and positions from information that has been given, but communicated in an oblique and circumlocutory way, as is to be expected to happen from time to time in government circles.

On the other hand we may expect professionalism from official bureaucrats, and we should assume that a level of reliability is ensured by interviewing professional bureaucrats in their official capacity – and in their capacity as first hand witnesses to government in action. The professionalism of the officials involved linked to the highly technical nature of the subject matter does ensure a further level of reliability of the interviewees. First of all they are likely to feel knowledgeable, and thus authoritative on the subject, and are thus very likely to have an opinion to express. Furthermore they are likely to come to the point on the issues precisely because of their knowledge, and even though they might very well not be willing to divulge everything they know on the politics of the negotiation process, the information that they are willing to supply will be relevant information about the one thing they know the most about, the politics of negotiation and policy formation. The level of expertise of the interviewees does however quite naturally reflect on the objectivity of the interview data. The questionnaire of the positions on the 10 issues is a key component to avoid reaping tainted fruits. This

is so because an objective reference point is supplied by the immutability of the technical matters around which the Oil Stock Directive revolves. These are the provisions of the initial proposal, and the provisions as finally found in the agreed upon directive.

On the face of it the interviews succeeded in obtaining the required data necessary to gain an understanding of the positions taken by the member countries during the EU Council negotiations. The majority of countries representatives responded by communications all or most of their nation states official standpoints during the negotiation procedure. Furthermore with the exception of France all the major EU countries responded, and though France did not react directly. Interviews were able to bring to light its standpoints on the issues. Thus the standpoints on the issues of France, Germany, the UK and Italy, as well as of many of the other Member States were provided through the interview method. This includes each of the highly developed Scandinavian Member States. Moreover it becomes obvious that this list includes those countries with the most voting rights in the EU Council(EU Council 2010). Furthermore many EU countries with specific energy concerns responded. Thus the standpoints of the most major players in the Oil Stock Directive are known, and in many cases this was achieved through the interview and questionnaire format.

That having been said it was not possible to find satisfactory data for the following countries: Spain, Romania, Poland, Lithuania, Estonia and Belgium. This was either because the interview did not supply the sought after research data, or because there was no interview given at all. Malta is a special case, the Maltese representative did agree to supply through an interview, but did not want this data to be made public. This data has therefore not been used in this study. France refused to react to the questions, or to be interviewed. However, since it was such a vocal party during the negotiation phase. It was possible to reconstruct the total French position using interviews conducted with third countries' representatives and the interview with the head of the EU Council working group presiding over the negotiation process.

## **4. Background EU Energy Policy**

In chapter 4 we analyse the EU Commission its analysis of the EU its energy policy that underlies the EU Oil Stock Directive. Chapter 4 consists of three main parts; section 4.1 discusses the energy crises that were the catalyst prompting, “policy learning”(Haverland, 1998, p.24), by the EU Commission in the field of energy. Section 4.2 discusses the policy documents and events that were the catalyst for the EU designing a new oil stock directive. In 4.3 the tasks facing EU energy policy is analysed against the backdrop of the challenge posed by global energy trends, listed and explained in 4.3.1.

### **4.1 Definition of a strategic oil stock reserve**

However, before we elaborate on identifying the trends and events - energy crises, which facilitated the drive and the creation of the strategic Oil Stock Directive by the EU Commission. Let us first consider what a strategic oil stock actually is. A strategic oil stock reserve is designed as a ‘collective’ crisis management tool (IEA 2010) in case of an energy crisis occurring. It thus is from a public administrative perspective a supranational policy instrument ensuring energy solidarity among its members in the event of crisis. In layman terms it very simple is a provision for future eventualities. Put in technical terms this means it is a strategic buffer against a temporary oil shortage. To be more precise: it is a tool to cushion the effect of a disruption in the supply of oil (IEA 2010). To be effective it must by its design ensure economically affordable energy in times of crises (IEA 2010).

Depending on the size of the reserve in relation to the real need for oil, such a reserve has a limited effective time span. It is an auxiliary measure, it thus is by design a short-term measure, that provides a temporary or at best a medium long-term solution to any shortfalls in the supply of oil. A strategic crude oil stock reserve is thus a strategic measure in pure form. It does not offer a structural solution. The challenges connected to securing a steady supply of affordable oil are of a structural and long-term nature. These are discussed in chapter 4.2, this section also explains the global energy trends as identified by the EU Commission in the 2006 EU green paper<sup>2</sup>: a European strategy for sustainable, competitive and secure energy (EU Commission 2006). The EU 2<sup>nd</sup> Strategic Energy Review is itself a direct response to the challenges posed by these global energy trends. The policy tool of a strategic oil stock reserve must be understood in the context of the energy challenges sketched in this chapter: it is a domestic measure to be sure, yet it is at the same time also a strategic tool with foreign policy dimensions. It is also a policy measure of global governance. Moreover it is an expression of a treaty alliance the member countries of the IEA have committed themselves to, in the service of mutual economic safety and efficiency. The IEA signing Member States have agreed to release oil reserves if one or a number of its members face an immediate oil shortage.

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<sup>2</sup> Green Paper: “Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers.” (EU Commission Glossary 7 January 2010).  
[http://europa.eu/scadplus/glossary/green\\_paper\\_en.htm](http://europa.eu/scadplus/glossary/green_paper_en.htm)

## 4.2 Energy crises

The EU Commission has chosen to place the treaty regime of the international energy agency (IEA)<sup>3</sup> at the heart of its proposal for a new EU oil stock directive: the EU Commission “proposes a revision in the EU’s strategic oil stock legislation, improving coherence with the international energy agency regime”(EU Commission 2008, p.3).

This decision to action can be directly traced back to two energy crises which occurred in the first decade of the 21<sup>st</sup> century: 1. The Russian gas crises, 2. the shortages of refined oil in the USA following hurricane Katrina in 2005. This last crisis prompted the IEA to invoke emergency procedures to release oil stock reserves according to the rules stipulated under the IEA treaty. This was done in order to alleviate shortages in oil supply in the USA. Which was a direct result of the devastation caused by hurricane Katrina on the oil infrastructure in the Gulf of Mexico and in the Southern States of the United States of America.

Both these crises highlighted the vulnerability and worldwide interdependence of fossil fuel supply. The crisis in the USA exposed the vulnerability of the production, storage, and refining of oil.<sup>4</sup> While the Russian gas crises exposed Europe’s growing dependence on imported fossil fuels. It also provided a wake up call for Europe in the fields of security of supply, and of the re-emergence of a realist national interest based energy policy in international relations. Which if systemic, creates a foreign policy paradigm for the coming decades of the new Millennium, in which energy is wielded as a strategic tool in service of national policy (de Jong & Weeda, 2007, p.21). This is a departure from the liberal free market model, which the EU presupposes as the system underpinning world energy markets (de Jong & Weeda, 2007, p.20). The EU its energy policy is geared to this kind of market, resting on the presumption of liberal markets; free markets are the paradigm that is at the basis of EU energy policy. Giving Europe an energy policy that does not have a strategic mindset, nor a heavy strategic component. Instead EU energy policy relies on a set of policies “which is in essence comprised of an internal market and competition policy, a nascent sustainable energy policy and an absent security of supply policy”(de Jong & van der Linde, 2008, p.1). If the international energy market, and especially the market for fossil fuels (e.g. oil) no longer operates along these lines. This immediately throws up challenges to EU energy-security, and security of supply.

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<sup>3</sup> “The International Energy Agency (IEA) is an autonomous body which was established in November 1974 within the framework of the Organisation for Economic Co-operation and Development (OECD) to implement an international energy programme”(IEA 2006, p.1).

The IEA is an international treaty regime with the goal of ensuring security of fossil fuel supply in the eventuality of an energy crisis through the maintaining of a system of energy reserves. Central to this regime is the oil stock reserve for crude oil and specified oil products. Member states are required to maintain a minimum of 90 days of oil imports in reserve facilities. We discuss the IEA here because it relates to the international energy framework of the EU because the existing energy security arrangements of the core EU states can be traced back to the IAE. Moreover, the IEA is still in effect, and the EU commission has affirmed its commitment to IEA procedures. The IEA was created as a direct response to the 1973 oil crisis; its founding member states were the group of the then leading industrial nations. Its offices were set up in Paris in 1973-74, and today every OECD member state barring Iceland and Mexico are IEA members (IEA, 2009). As a consequence the most industrially advanced member states in the EU are also IEA members, many being so from 1974 onward. An independent intergovernmental body called the executive office controls the IEA regime. This constitutes the board of directors. The IEA board has the authority to order its member states to release oil reserves when it deems this necessary. Energy ministers from the 28 OECD countries are however directly involved in the IEA structure, and convene from time to time (IAE 2009).

<sup>4</sup> Kumins, L. & Bamberger, R. (2006), CRS Report for Congress, Oil Disruption From Hurricanes Katrina “Hurricanes Katrina and Rita shut down oil and gas production from the Outer Continental Shelf in the Gulf of Mexico, the source for 25% of U.S. crude oil production and 20% of natural gas output. Katrina, which made landfall on August 29, resulted in the shutdown of most crude oil and natural gas production in the Gulf of Mexico, as well as a great deal of refining capacity in Louisiana and Alabama. Offshore oil and gas production was resuming when Hurricane Rita made landfall on September 24, and an additional 4.8 million barrels per day (mbd) of refining capacity in Texas and nearby Louisiana was closed,. Combining the effects of both storms, 1.3 mbd of refining — about 8% of national capability — is shut down, reducing the supply of domestically refined fuels commensurately”(CRS 2006. p.4).



The Russian gas crises date back to 2006 (Heck 2009). The first gas crisis occurred when Russia cut off gas supplies to the Ukraine in January 2006 (Stern 2006). This automatically also affected all its customers connected to the pipeline downstream from the Ukraine. A logical consequence of the fact that of the Russian gas destined for the EU 80% reaches the EU through pipelines running through the Ukraine (Elder 2006). However in 2006 only the new EU Member States in the east of Europe were affected, finding themselves cut off from Russian Gas supplies (EU Commission 2009). It is worth noting that 10 of the new Member States are dependent on Russia for more than 60% of their natural gas (Scott 2009).

However, it was the second Russian gas crisis of 2009 that had more far reaching implications. It did not only affect Bulgaria and Rumania, but also saw: Greece, Italy, Slovenia, Austria, Poland and Hungary faced with shortages of gas (Gow 2009). In direct response President of the EU Commission Manuel Barroso stated that it is unacceptable that EU citizens find themselves in the cold – it was winter - as a result of energy crises (EU Commission 2009). It is noteworthy that in both instances Russia chose to cut off the supply of gas in winter, which was not only due to economic considerations, but was as much also a political choice. This gives Russia political leverage (Elder 2009). The gas crisis exposed the unreliability of Russia as an energy supplier, in this case of gas, but as a consequence possibly also of oil (EU Commission 2006). Apart from the foreign policy dimension, the gas crisis exposed the backward energy provision of the new EU Member States. These countries overall energy provisions are insufficient and lagging behind those of the other Member States. To make a side step for comparison's sake: in reference to the state of electricity infrastructure and provisions in the new Member States the EU Commission speaks of “energy islands” (EU Commission 2006, p.8). The term might as well be used for the oil stock reserves in these countries too, since they are below the provisions and preparedness in the other EU states. The fact that many Eastern European Member States are not IEA members, in stark contrast to the rest of the EU, has also been noted.

The Russian gas crises is thus relevant to the EU oil stock directive, not because it highlighted the EU its dependence on imported Russian gas - In the old EU member states Russian gas accounts for 5% of energy needs (Scott 2009) -, but because it highlighted the EU its overall dependence on imports in general to satisfy its fossil fuel needs. Especially it brought back to the political and policy attention of EU policy makers the facts that: 1. The EU is even more dependent on imports for its oil needs than it is for gas, and 2. that its Member States' emergency provisions for energy crises are lacking, and with regards to oil, may be –and can in the new EU Member States – be presumed to be just as poor or worse than the auxiliary measures that exist for gas crises, which did not work. The third point of the learning curve for EU policy makers is that it has now twice been shown that the EU Commission cannot restore the supply of fossil fuels in a crisis situation. It does not have foreign policy clout, neither does its influence count for as much as hoped, and it does not have other – technical policy - means to quickly restore energy supplies in the eventuality of a crisis situation.

The second crisis, which directly bears on the oil stock reserve directive, is the energy crisis in the USA, following Hurricane Katrina, in 2005. This is a crisis in which the EU did not play a direct part, nor were Member States adversely affected by it. However, as stated above, hurricane Katrina exposed the vulnerability of world energy markets of crude oil and oil products. The coming off stream of oil fields in the Gulf of Mexico caused immediate supply disruptions in the southern states of the United States<sup>5</sup>. Most production facilities were inoperable for weeks, and some stayed out for months (Kumins & Bamberger 2006). In order to alleviate shortages of crude oil, the IEA ordered all of its then 26 member states to release part of their emergency reserves (Kumins & Bamberger 2006). This included several European countries whom are IEA members. The EU Commission was consulted by the IEA, and supported the measures ordered by the IEA (IEA 2005).

Which brings us to “policy learning”(Haverland, 1998, p. 24). The EU Commission is of the conviction that the conclusions drawn from these energy crises by it - by the EU Commission, are

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<sup>5</sup> Kumins, L.& Bamberger, R. 2006, CRS Report for Congress, *Oil Disruption From Hurricane Katrina* “Much of the refined product shortfall was made up by imports of refined products, some of which were made available by strategic supplies released by International Energy Agency (IEA) member nations on September 2.” (CRS 2006. p.4).

lessons learned which are crucial in understanding the policy challenges and the matching policy solutions: the “release of emergency stocks organised by the IEA in response to hurricane Katrina worked well” (EU Commission 2006). The emergency release of oil stocks was instrumental in averting more serious oil shortages. The EU commission drew the conclusion from the successful IEA decision: that strategic oil stock reserves are very necessary for the security of supply, that they work, and that IEA protocols do the job they are designed to do in an efficient way (EU Commission 2006). When the belief takes hold with policy actors that they have experienced a successful learning curve in conducting policy, this is by itself more important than whether this is in fact true (Haverland, 1998, p.24), because this belief drives policy formation.

This is the reason why the proposal for a new oil reserve directive is specifically designed to be in line with IEA practices. The EU Commission proposal reflects how seriously it takes its own perceived: ‘Policy learning.’ As exemplified in the 2006 EU Commission Green Paper: a European strategy for sustainable, competitive and secure energy (EU Commission 2006), and the EU 2<sup>nd</sup> Strategic Energy Review.

### **4.3 EU Green Paper; global energy trends as a EU energy challenge**

In 2006 the EU Commission published a Green Paper titled: a European strategy for sustainable, competitive and secure energy (EU Commission 2006). In it the EU Commission assesses the EU energy situation for the “coming 20- 25 years” (EU Commission Working Document 2006). The 2006 Green Paper on energy must be mentioned here because it forms the teleological basis for the drafting of a new strategic oil stock directive, replacing the previous legislation in this field.

It is in the 2006 Green Paper that the EU Commission identifies several global energy trends, which pose a challenge to the medium and long term energy security of the EU. These are listed here below. The EU green paper on Energy issues is further analysed in depth in depth in the annex to the EU Commission Green Paper, or staff working document: “A European strategy for sustainable, competitive and secure energy, what is at stake - background document” (EU Commission 2006).

The issues are listed here below in full, with an explanation of the issue at hand. The 2008 strategic energy review has set an agenda requiring policy to be made in response to all issues in the coming decades. The situation of oil is seen as especially serious because there is a growing discrepancy between supply and demand, fed by many global underlying causes at the same time (EU Commission 2006). One most intractable fact is that the EU its own proven oil reserves are an infinitesimally small part of proven world reserves. Less than 1%, to be precise: “Between 0,5% (BP 2007) and 0,8% (BGR 2006) of world reserves” (EU Commission DG-ET 2008).

#### **4.3.1 ENERGY TRENDS IDENTIFIED IN THE EU GREEN PAPER**

The EU Green Paper identifies the following 6 energy trends listed here below. The EU Commission sees these as shaping the energy markets for the coming decades. The underlying dynamic of each trend is directly explained here below, with additional sources provided to the reader that explain the current state of affairs on the energy trends as well as explaining how their underlying logic creates issues for the EU. Data from several other sources are added because the reader cannot glean these from the EU Green Paper, which is first and foremost a policy document where the EU Commission presents its policy goals as self evidently necessary. The teleological justification of the issues identified does not figure large in the Commission Green Paper. The EU Commission assumes its intention to make policy on the issues is in itself proof of the self-evident scientific accuracy and background of the claims on which its policy intentions are based. At the bottom of the list there is a short conclusion of the foreseeable strategic implications for the EU.

### 1) Higher energy prices

Higher energy prices are the dependent variable most suited to act as a gauge of the overall availability of energy. As a dependent variable it encapsulates and sums up all the other trend influences. (In that higher prices are a direct result of trends II, III, III, IV, V, and VI). Any of the continuation of these trends can by itself be enough to keep oil prices on the current high plateau, combined they have a mutually reinforcing effect on each other and can drive prices up. Prices are themselves a process of aggregates of supply and demand, and thus sum up scarcity as a natural outcome. The other effect which makes this trend special however is that higher oil prices can in turn stimulate energy efficiency, more exploration of oil fields (Werdigier 2010), and other measures tempering all the trends referred to here above and explained here below.

### 2) Increasing global demand for oil

More and more countries, including the non major surplus oil producing (Russia being the exception), rapidly industrializing BRIC countries: Brazil, China, and India, consume more and more energy. As a result of this “global demand is projected to grow by 1.6% per year.” (EU Commission 2006, p.3).

### 3) Concentration of oil production in a limited number of producer countries

Production is more and more concentrated in a limited number of oil producing countries. The EU imports most of its gas from Russia (EU Commission DG for Energy 2010) and most of its oil from the Middle East (Purvin & Gertz inc., 2008). That being said Russia by itself already accounts for 27% of the EU its oil imports (EU Commission DG for Energy 2010). As far as concentration of reserves goes “Over two thirds of oil reserves are concentrated in the Middle East (61%) and Russia (6,4%). South and Central America and Africa account for 18,5%” (EU Commission DG-ET 2008).

Though the fact that OPEC is about to celebrate its 50<sup>th</sup> birthday this year testifies of the fact that concentration of oil production in just a small number of producer countries is nothing new, there is none the less a trend of a rising level of concentration of oil production in a limited number of countries. With Russia being the exception, most of these countries are in OPEC.<sup>6</sup>

This is further strengthened by the growing ascendancy in oil production of third countries’ national oil companies (ITPOES 2010, p.12). As a consequence the group of western-based giant oil corporations consisting of the likes of BP, Shell, Chevron, ConocoPhillips, ExxonMobil and Total - known as the ‘Super majors’ -, that have traditionally controlled the world’s oil production (Kalbayev 2008) are losing market share in the field of oil production (ITPOES 2010, p.12). The field were the ‘Supermajors’ are especially losing out to the national oil companies is in the bringing online of new fields, and subsequently the production and the control over the world’s new oil fields coming ‘online’.

The trend is for nationally owned oil companies such as Saudi Arabia’s Aramco, Russia’s Gazprom (Kalbayev 2008), Brazil’s Petrobras, or in the case of China; PetroChina, to control world oil reserves (Kalbayev 2008). PetroChina and Petrobras are the only two oil companies that have significantly expanded production through new oil fields this decade (ITPOES 2010, p.12).

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<sup>6</sup> In a study by Purvin & Gertz inc., *Study on oil refining and oil markets* prepared for the European Commission. Oil production in many established oil fields will not increase but decline. New oil fields coming online can not offset these loses. For example the case of Europe is especially pressing with North Sea fields will decrease from 4 million barrels per day in 2009 to 2.74 million barrels per day. Only Russia will incrementally continue to have growing production up to a projected 15 million barrels a day by 2020 from 12 million barrels in 2009. “European production peaked in 2000 “ (Purvin & Gertz inc., 2008. p.14). This will further increase Europe’s dependence on imported oil, which itself is also on a plateau. **“The balance of production is expected to shift significantly towards OPEC”** (2008, p. 16).

#### 4) Unstable supply regions and unstable suppliers

The countries in which oil production is concentrated lie in unstable, conflict prone regions, such as the Middle East and the former Soviet Republics – already referred to in relation to point III -, or are as countries themselves prone to unstable political developments and politics at home. All these factors threaten security of supply - meaning that the supply of oil is cushioned against such shocks as the OPEC Oil Embargo of 1973, the archetype threat to security of supply. Political stability counts for a lot in security of energy supply considerations, and is even one of the reason why the Dutch government chooses to keep environmentally unfriendly coal as a key component of its future energy vision in its policy paper: ‘The Netherlands Energising the future’: “Another benefit is that coal comes from politically stable countries”(Dutch Ministry of Economic Affairs, 2008, p.51).

#### 5) The imminent worldwide onset of dwindling oil reserves; “Peak Oil”<sup>7</sup>

The onset of peak oil - the world running out of ‘more’, ‘new’ finds of oil - is much discussed and it is much in dispute, and there is not a consensus, whether peak oil is a reality here today, as we speak. Or whether the world will be facing peak oil in ten or twenty years time, as claimed by the IEA chief economist Fatih Birol(Lynch, 2009, p.1).

On the other side of the argument there are those experts that see the debate whether peak oil will in actuality ever happen as superfluous.<sup>8</sup> They identify the other trends cited in the rest of this chapter as the immediate, and real causes for possible impending oil shortages (IEA 2008). In the oil industry they view is that “lack of new investments and the rising energy nationalism (Russia, Venezuela) could endanger future supplies more than the geophysical limits”(Euractiv 2007). William Ramsey an expert at the IEA subscribes to this view: that investments at the supply side in the oil industry are falling beside the wayside, causing shortages. As causes he identifies political instability in supplier countries (IEA 2008).

Peak oil when understood in the traditional sense – the World running out of oil - is based on the premise of the immutable “geological scarcity” (Lynch, 2009, p.1) of the fossil fuel; oil. In this paradigm declining production is eventually a certainty. Caused by the combination of too few new reachable and developable – not to mention economically viable - oil fields being found and developed, while coinciding with an ever-growing global demand for oil. Thus peak oil can be understood in two ways:

1. Literally: the production of oil peaking in absolute numbers ever to be produced on an annual basis, and then declining in absolute numbers, of oil produced annually, for good.

2. As a structural imbalance of demand and supply: with the global demand for oil outstripping the production of oil year after year - indefinitely.

One fact is however not in dispute: that many experts, including EU officials responsible for energy policy, believe that oil reserves are finite and cannot keep up with demand indefinitely (Euractiv 2008). The fact that EU officials acknowledge this in their official capacity (Euractiv 2008) is from a public policy point of view more important than who is exactly right, and who is wrong, in the peak oil debate. Institutionally held perceptions become reality within those institutions acting on this. Thus institutional actors’ perceptions become reality to public policy research.

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<sup>7</sup> “The peak and decline of the world’s production of oil and gas, due to resource constraints.” (ITPOES: ‘*The Oil Crunch A wake-up call for the UK economy*’, Second report of the UK Industry Taskforce on Peak Oil & Energy Security (ITPOES). London 10 February 2010, p. 33).

<sup>8</sup> “Peak oil’ is an expression that is widely mis-understood. It does not relate to a prediction that there’s no more oil left to extract from the earth’s oil fields (although oil is a finite resource and it must run-out sometime). Rather, it relates to the maximum rate at which we can extract oil.” (ITPOES: ‘*The Oil Crunch A wake-up call for the UK economy*’, Second report of the UK Industry Taskforce on Peak Oil & Energy Security (ITPOES). London 10 February 2010, p. 9).

Moreover, even ardent detractors of the peak oil theory acknowledge that oil is by definition a finite resource, and that the debate is essentially about how much of a finite resource, and how acceptable and affordable, and feasible it is to get at the oil still out there<sup>±</sup> in the world - or presumed out here.<sup>9</sup>

In either case of the peak oil scenarios, there will be major adjustments of the affordability and availability of oil. The EU its official standpoint is that “Peak Oil” is a very realistic scenario with much probability in it (Euractiv 2008).

#### 6) Global competition for energy & resource nationalism: the new “Great Game”<sup>10</sup>

Resource nationalism is on the rise (EU Commission 2006). There are two distinguishable types of resource nationalism. One is on the supply side, and the other on the demand side. Both squeeze the market for energy. Both are cousins and handmaidens to neo-realist policies. The hallmark of this is government control of energy resources. Linking the foreign policy and diplomacy of countries such as Russia and China to pursuing neo-realist economic policies through: protecting and acquiring exclusive access of natural resources.

Echoing Rudyard Kipling, the Financial Times of London has summed up this trend for control of energy as: the new ‘Great Game’ (Stanislaw 2010).<sup>11</sup> “The scramble by states to secure fossil fuels has been a dominant leitmotif of geopolitics over the past decade. The resulting transformation of the old-energy chessboard has been extraordinary: today, nearly 90 per cent of fossil-fuel reserves are controlled by states, against a mere 15 per cent a quarter-century ago”(Stanislaw 2010).

On the demand side countries like China pursue aggressive energy scouring policies across the globe, locking resources squarely away from the greater world market, through bilateral energy deals with governments (de Jong & Weeda, 2007, p.12). These bilateral deals are linked to investment packages, which sometimes can also take the form of development aid (House of Lords European Union Committee 2010). A representative of the EU Commission spoke to the House of Lords European Union Committee of a Chinese approach that can be described as a ”predatory policy of grabbing resources”(House of Lords European Union Committee 2010 ch.9 hd.299).

However, on the supply side China can play this game hard too. Just how tough becomes clear from its new policy with regards to rare earths: China has enacted an embargo on rare earth exports (Bradsher 2010). Rare earths are indispensable to high tech manufacturing such as building cars and wind turbines (Dempsey 2010). China mines no less than 95% of the world’s rare earth (Bradsher 2010), a fact with potential strategic and economic implications even not lost on Deng Xiaoping in his day. The policy by which China is severely curtailing exports beginning from October 2010, has alarmed Germany to such an

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<sup>9</sup> “In the end, perhaps the most misleading claim of the peak-oil advocates is that the earth was endowed with only 2 trillion barrels of “recoverable” oil. Actually, the consensus among geologists is that there are some 10 trillion barrels out there. A century ago, only 10 percent of it was considered recoverable, but improvements in technology should allow us to recover some 35 percent — another 2.5 trillion barrels — in an economically viable way.” (Lynch, M. 2009, New York Times, *Peak Oil’ Is a Waste of Energy’*, 24 August 2009).

<sup>10</sup> The Great Game, a phrase re-coined by foreign policy experts and energy experts alike to describe the competition for control over energy resources among the major powers, especially oil, and their strategic corridors and hubs of delivery to the world market. Uses the term along those same lines, but identifies also the rise of new players such as China, Brazil and Pakistan. (Hill, F. *The Great Game: The 2020 Edition.* Brookings Institute, 12 July 2002). [http://www.brookings.edu/articles/2002/0712asia\\_hill.aspx](http://www.brookings.edu/articles/2002/0712asia_hill.aspx)

<sup>11</sup> The term: ‘The Great Game’ was already reintroduced under the header *‘The New “Great Game”*’ in the 1990s, by Dr. Ariel Cohen, when he described the scramble for influence in the oil rich republics of Central-Asia, which were opening up as a result of the brake up of the former USSR. (Cohen, A. 1996, *‘The New “Great Game” Oil Politics in the Caucasus and Central Asia’*, The Heritage Foundation, 25 January 1996). <http://www.heritage.org/research/reports/1996/01/bg1065nbsp-the-new-great-game>

extent that the German government and German industry are petitioning the WTO and the EU Commission to act (Dempsey 2010). The German minister of Economic affairs, Brüderle, has openly called the Chinese step an “unfriendly act”(Dempsey 2010). The sudden reasons for the embargo are unclear, but China experts believe that “Beijing’s assertive stance on rare earths might also signal the ascendance of economic nationalists, noting that the Central Committee of the Communist Party convened over the weekend”(Bradsher 2010).

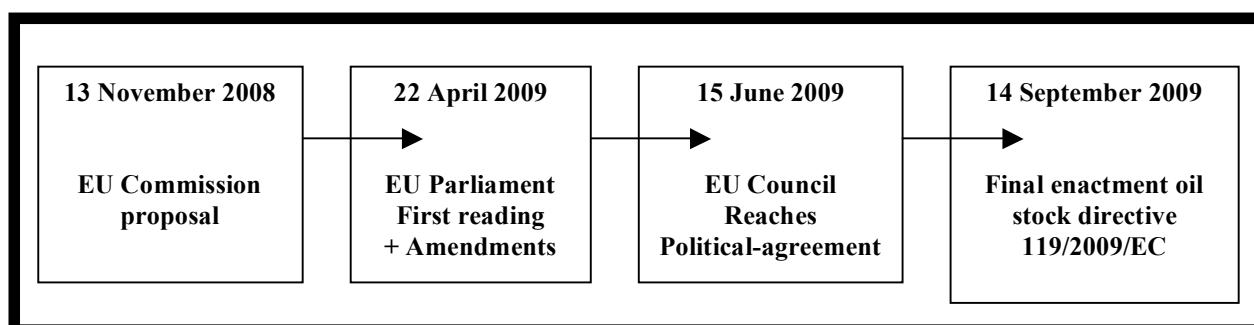
On the supply side with regards to oil there is the current example of Russia, which has shown a willingness to use energy as a bargaining device in its foreign relations - with the gas crises proving the point on how much leverage Russia is prepared to use when it feels it must get its way. Though the phenomenon of the renaissance of Russian Real Politik under Messrs Putin and Medvedev may be temporary. Europe its growing reliance on Russia as one of its main energy supplier will not be temporary, at least not in the strategic assessment made by the EU Commission (EU Commission DG for Energy 2010).

These trends are interconnected and have a mutually reinforcing effect upon each other. Add to these the EU specific trends of dwindling domestic production (and harder, and thus more expensive, to get at oil fields. Tempering industry its enthusiasm for exploration), and the EU is faced with a situation as sketched by the Commission. Where “in the next 20 to 30 years around 70% of the Union’s energy requirements, compared to 50% today, will be met by imported products – some from regions threatened by insecurity”(EU Commission 2006, p.3). In its communication to the Council and Parliament: ‘*Facing the challenge of higher oil prices*’, the EU Commission furthermore speaks of the projections of the EU being dependent on imports for 95% of its oil requirements by 2030 (EU Commission 2008, p.6).

## 5. PROPOSAL AND NEGOTIATIONS OF THE EU OIL STOCK DIRECTIVE

Chapter 5 identifies the facts of the negotiation process. First of all, the issues at the heart of the negotiation process are identified in section 5.1. These were the contentious issues between the institutional actors. Section 5.1 explains why the 10 issues identified in the proposed articles in the directive are the issues by which the research question can be tested. The teleological reasoning behind the issues is explained in 5.1.1. In 5.2 the consultation procedure is explained: its legal basis, and what role it accords to the institutional actors. Furthermore a comparison is drawn with the other legislative procedures: the co-decision and co-operation procedures. The timeline of negotiations and decision making moments between the institutions under the consultation procedure is clarified by (Figure 2), following directly at the end of section 5.2. Starting from 5.3 the positions on the issues of all the actors is presented, in (Table 1). The position of the EU Commission is discussed in 5.3, the positions of the EU Parliament in 5.4. Section 5.5 presents the positions of the 27 EU Member States during the EU Council negotiations. In 5.6 the EU Council its unanimous position on the issues is presented together with the final directive. Section 5.7 presents the conclusion of the research findings. This chapter begins here with figure 1, showing the timeline of the key moments in the legislative procedures between the legislating institutions, leading finally to the enactment of the directive into law. Figure 1 here directly below shows the key moments in the decision making process.

*Figure 1 Timeline of legislative decisions by EU institutions on the Oil Stock Directive*



### 5.1 The issues at the heart of the negotiations

The debate during the negotiation of the Oil Stock Directive focussed largely on 10 specific issues. It was these 10 legislative proposals that proved to a lesser or greater degree contentious between the different actors involved in the development of the oil stock directive. Because of this we identify these 10 proposed articles in the text of the directive as more or less controversial, and political. As stated in section 1.4 of the first chapter, these 10 issues constitute the dependent variables in this case study. Now the directive in full contains 27 articles. Our research found that most of these were non-controversial and passed without much ado about them, the institutional actors could easily agree on these. However, it are these 10 identified issues in this chapter that form the heart of the debate. These constituted those parts of the proposed directive on which the institutional actors, comprising of the EU Commission, the European Parliament and the EU Council, had disagreements and discussions.

These were not just the cause for the negotiations. They constituted the issues between the decision-making actors. They are the red meat the institutional actors politicked for in the Oil Stock

Directive. Thus understood the proposed articles are operationalised to form 10 touchstones by which the eventual decision making of either the EU Council, the European Parliament or the EU Commission can be determined, in this case study. The outcome of the politics and decision making on these issues will enable us to answer the research question: who has the most decision-making power between the institutional actors? This is the reason why 10 proposed legal articles equal 10 issues.

As is apparent from chapter 4.3, the EU Commission had concrete policy objectives for proposing these articles of legislation: the issues are linked with the energy challenges faced by the EU Member States. As we shall see in this chapter the other institutional actors have clear policy objectives with regards to the Oil Stock Directive, Thus every of the 10 articles operationalised as an issue in the political and administrative sense, is before it is an policy objective in its own right, and an abstract litmus test of government influence, also a proposed solution to a real world problem, a real policy objective. Like a hinge the two ways of understanding and looking at the 10 issues link questions relating to the management of oil reserves and energy security with questions of governance and government.

### 5.1.1 The 4 meta-issues at the heart of the Oil Stock Directive

The strategic Oil Stock Directive has 4 dimensions to its design which form the teleological basis for the legal articles proposed to provide concrete solutions to the questions entailed in the 4 dimensions to the Oil Stock Directive. The 10 issued are the main ingredients in the EU its bid for oil security, and how the EU hopes to achieve this through this directive. The 10 issues identified as at the heart of the negotiation process are but the concretisation in their finest detail of a number of issues, which one could call the meta-issues of the Oil Stock Directive:

The institutional actors agree that the meta-issues are the question to which the directive must find the most satisfactory answer. These form the kernel of the strategic Oil Stock Directive, because they are the ingredients with which the Oil Stock Directive – as designed by its framers - seeks to address the challenges identified in chapter 4.

### 5.1.2 The 10 main issues of the Oil Stock Directive

In the following list the meta-issues and the 10 main issues are discussed here below.

#### **Meta-issue A: The ideal size of the oil reserve stock**

This must be rated as one of the main issues of the directive because it aims to merge EU practices across the board with compliance with IEA methods on oil stock holding as far as the ideal obligatory size of the oil reserve is concerned. However the Commission at the same time also wants to improve on IEA methods in the EU context with regards to the calculation method, and the question of which type of reserves are allowed to count as strategic oil reserves. This dichotomy makes the 4 issues listen directly below contentious because of the conflicting ambitions in the proposals by the EU Commission.

- 1) Must the minimum oil reserve correspond to 90 days of net oil imports, or 70 days of inland consumption, whichever of the two quantities is greater?
- 2) Should indigenous oil production be allowed to count as an equivalent replacement for stocked oil reserve stocks?
- 3) Should oil reserve stocks that are operated and managed by commercial operators be allowed to count as part of the oil reserve stocks?
- 4) Should it be allowed for oil reserve stocks to be physically stored with normal operating stocks held by industry? (So called commingling of stocks)



This is the question of ascertaining and then establishing the ideal size of oil reserve stocks that each country must maintain. These 4 issues are a question questions about what constitutes an adequate and effective, as well as a feasible reserve of oil.

The issue of establishing the minimum number of days of oil reserve must first and foremost be understood as striving to establish that size contingency oil reserve that will allow governments a minimum breathing space to take measures to solve the shortfall in oil (European Parliament II 2009). Secondly, the size of the oil reserve has a strategic dimension at its core. It must be large enough to give governments a strategic window of opportunity to overturn strategic disruptions of the supply of oil, which “could also “compromise” national military capabilities“(European Parliament II, 2009, p.1). Thus, to recapitulate: the number of days must be adequate to allow the vitals of the economy to remain functioning in case an energy emergency cannot be solved immediately. The number of days of oil reserves also represents a strategic timeframe allowing national action to restore the supply of oil.

The issue of whether the oil reserve must be calculated by either the yardstick of imports of oil or consumption of oil is directly linked to the actual amounts of oil used in any given national economy, and which of these methods of measurement establishes with most accuracy the actual need for oil in an economy.

The limit to determining the size of the minimum oil stocks to be held – calculated in days, imports and consumption - is a trade off between the costs of establishing and maintaining a reserve, with what a country needs in order to sustain itself in a crisis situation.

The teleological litmus test of all four proposals linked to the issues is whether they as measures will ensure delivery of enough oil in case of an energy crisis. This means ensuring delivery of enough of the right sort of oil on a day-to-day basis for the economy to keep functioning during an energy crisis.

Political critics of the proposed size and method of calculating the oil reserve doubt that the proposals in the new directive can deliver this purported measure of energy security (Dutch Parliament 2009). While others on the other side of the debate find the cost of establishing reserves in such quantities measured up as an aggregate in number of days and percentages of imports and consumption, as inexpediently high. This debate is subjective to the institutional actors points of view, and thus not immediately central to the issue.

It is however good to take this into account as far as the possible required size of the reserve goes, different contingencies would suggest a different sized oil reserve. Two main categories of causes of energy crisis can be distinguished: 1. Natural disasters 2. Man made, political disruptions. Overall it can be said that as a rule natural disasters are temporary in nature, and do not influence the supply in the mid- and long term. The scenario as under hurricane Katrina would justify a modest reserve.

#### **Meta-issue B: The management, holding, and ownership of oil stocks**

*Main issues correlated with the issue of under which legal forms, and by which agents or organisations oil reserves may be held, bought, and managed*

- 5) Should it be allowed for oil reserves to be held outside of the member state its borders on which the obligation falls?
- 6) Should options in the form of tickets be allowed to count as part of oil reserve stocks?
- 7) Should a central stockholding agency be obligatory in Member States for the control, sale, acquisition, and management of all oil reserve stocks?

This relates to the physical storage place and actual ownership of the oil stocks held in storage. Oil stocks must be immediately and swiftly available to the economy in a time of crisis. The tenet of the IEA regime is that the market by itself will not guarantee this. That is the reason why the IEA regime requiring its members to maintain oil stocks was instigated. Thus it is state power acting in line with international treaty obligations, which must ensure this. The state in treaty with the IEA must be able to release the stocks by law. The question is whether this can be done expediently, without hindrance

or delay, when stocks are held in ownership by private enterprise. Or when government entities have delegated the holding and management of oil stocks to private enterprise via tickets, which often is in a third country, sometimes overseas.

Furthermore there is the question of transparency. How can it be guaranteed that oil stocks purported to be held, are actually there, unencumbered by any other legal claims to their ownership and control. Which might stop governments from ordering their prompt release.

#### **Meta-issue C: EU oversight of oil reserve stocks**

*Main issues correlated with the issue of: control and oversight of oil reserve stocks by the EU Commission,*

- 8) Should commercial operators report their reserves on a weekly basis?

The reporting of oil stocks to the EU Commission by industry and Member States. The weekly reporting would be directly to the EU Commission. The EU Commission would demand as precise as possible accountability from all those whom hold oil reserves in the EU. With the aim of making sure all EU states conform to the IEA practices while at the same time establishing more oversight, and thus control by the EU Commission.

#### **Meta-issue D: Security of supply**

*Main issues correlated with the issue of: security of supply, how to incorporate and give substance to, the stated main aim and justification, of this Oil Stock Directive. In the face of the energy trends, how can the directive secure the steady flow of oil to the EU?*

- 9) Should measures be taken to ensure long-term security of supply by creating a favourable climate for industry to prospect, and develop, new oil fields?
- 10) Should security of energy supply be linked with the EU foreign policy towards the EU its neighbour countries?

## **5.2 The consultation procedure**

The legal basis for the consultation procedure is articles 94 and 192 of the treaty of the European Union, as established under the treaty of Nice (Foster 2008, p.22 & p.54).<sup>12</sup> The other legislative procedures are the co-decision procedure, the assent procedure, and the cooperation procedure. The EU Commission can decide under which procedure it wants to propose new legislation. The EP and the Council can contest the chosen procedure (Interview head working group energy EU Council 2010).

The consultation procedure basically works as follows: the EU Commission proposes a piece of legislation, the EU Parliament is consulted, after this the EU Council is then free to decide on the proposed legislation (Europa.eu. 2010). The reading by the EU Parliament is non-binding, but the EP has the opportunity to advise amendments to the Council. The Council can totally ignore the EP its advice if it so chooses. However, the EU Commission too can at this stage still decide to amend its proposal (Cini 2005). The EU Council must take these amendments into consideration; they are the new guise of the original proposal. The EU Council can decide to reject the draft outright, this last decision however must be unanimous (Cini 2005). The EU Council does however not have to agree unanimously to pass a proposed directive. A qualified majority vote among the 27 Member States

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<sup>12</sup> “The treaty of Nice came into force 1 February 2003”. (Europa.eu., 13 Sept 2010).  
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/03/23&format=HTML&aged=0&language=EN&guiLanguage=en>

suffices in the EU Council to pass a proposed piece of legislation.

One could logically expect that in a body consisting of 27 sovereign Member States, the positions will seldom be unanimous. It would seem plausible to expect coalitions – especially when made up of at least one of the larger Member States – to use the qualified majority voting on key pieces of legislation.

However this does not seem to be the case could be attributed to the design of the negotiation process in the EU Council. The EU Council is structured as a multi-layered negotiating body. There are the working groups, and the Coreper<sup>13</sup> level, which also consists of working groups, but at a higher level, and the Council of Ministers. Whose signature is needed to pass a proposal into law. The first tier are the working groups, it is here that a proposal passes into the policy making process of the EU Council.

The Coreper level is central to this multi layered design through its specialized working groups and committees. Coreper is the umbrella name under which these function within the bureaucratic structure within the EU Council itself. This level of the negotiation process, known as: the Coreper-level, is the talking shop of the technocratic specialists, and the national specialists. Here the appropriate, specialized and responsible national bureaucrats – all national civil servants, discuss and deliberate and amend. Among themselves or together with specialists on the subject at hand, they settle and bargain the details of the proposed laws. Coreper is a bureaucratic body, but since so much of substance is settled in its proceedings: it is very much a part of the decision making process in the EU Council. Since many proposed directives are of a highly technical nature, with accompanying complex policy dossiers, the only way to have a real debate on the issues is at the Coreper level. It then is only a small leap for the technocrats in the Coreper to hammer out consensus on the issues among themselves, thus making it possible for the bureaucrats at the EU Council to present for approval to the national ministers in the Council of Ministers, - whose signatures are needed to pass a directive into law – agreed upon proposals and standpoints for the most proposed legislation. In essence directives whose outcome has been finalised and agreed upon already before the national ministers eyes see it.

However there the procedure is also at this point still an inter-institutional procedure, without the approval of the Council the proposal can be sent back to the Commission for revision, equally the Commission can also withdraw the proposal if it feels that the EU Council is changing its text to such a degree that it is no longer acceptable to the EU Commission. The Commission and the Council are thus in theory of equal stature, both can stop a bill from passing through to the next level. The EU parliament does not have any formal decision making instruments under the consultation procedure as such, only under the co-decision method. Under consultation its role is limited to influencing the other institutional actors. Naturally, understanding the above, the choice to follow the consultation procedure left the EU parliament in a weaker position than if another decision-making method had been followed. As Brussels insider to the negotiation process in the Oil Stock Directive acknowledge, the choice which procedure to follow is next to a straightforward technocratic matter, where the most suitable procedure is selected, also on grounds of its legal basis: “A fight for power” between the institutional actors (Interview Finnish Negotiator 2010).

The EU decision-making process works with 4 main procedures: the co-decision procedure, which is the most widely used (Cini 2005), the co-operation procedure, assent procedure, and the consultation procedure (Cini 2005).

As already mentioned, the consultation procedure is the oldest established EU decision making procedure (Cini 2005). In this case the EU Commission chose to use the consultation procedure to introduce its draft for a new oil stock reserve directive. There may be reasons of expedience behind this decision. If we follow the logic of seeing the institutional actors - The Commission, Parliament and the Council – not just as institutions, but as political actors jostling for power. We must examine if the selection of the legislative procedure affects the outcome of the

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<sup>13</sup> Coreper: is an acronym for Permanent Representatives Committee of the EU Council, in Coreper the civil servants of the member states, acting as permanent representatives, prepare the work for a final vote in the EU Council. If at all possible they try to reach agreement between all the member states on a proposal there and then. “Coreper occupies a pivotal position in the Community decision-making system, in which it is both a forum for dialogue (among the Permanent Representatives and between them and their respective national capitals) and a means of political control (guidance and supervision of the work of the expert groups)”. (Europa.eu., 9 August 2010)  
[http://europa.eu/scadplus/glossary/coreper\\_en.htm](http://europa.eu/scadplus/glossary/coreper_en.htm)

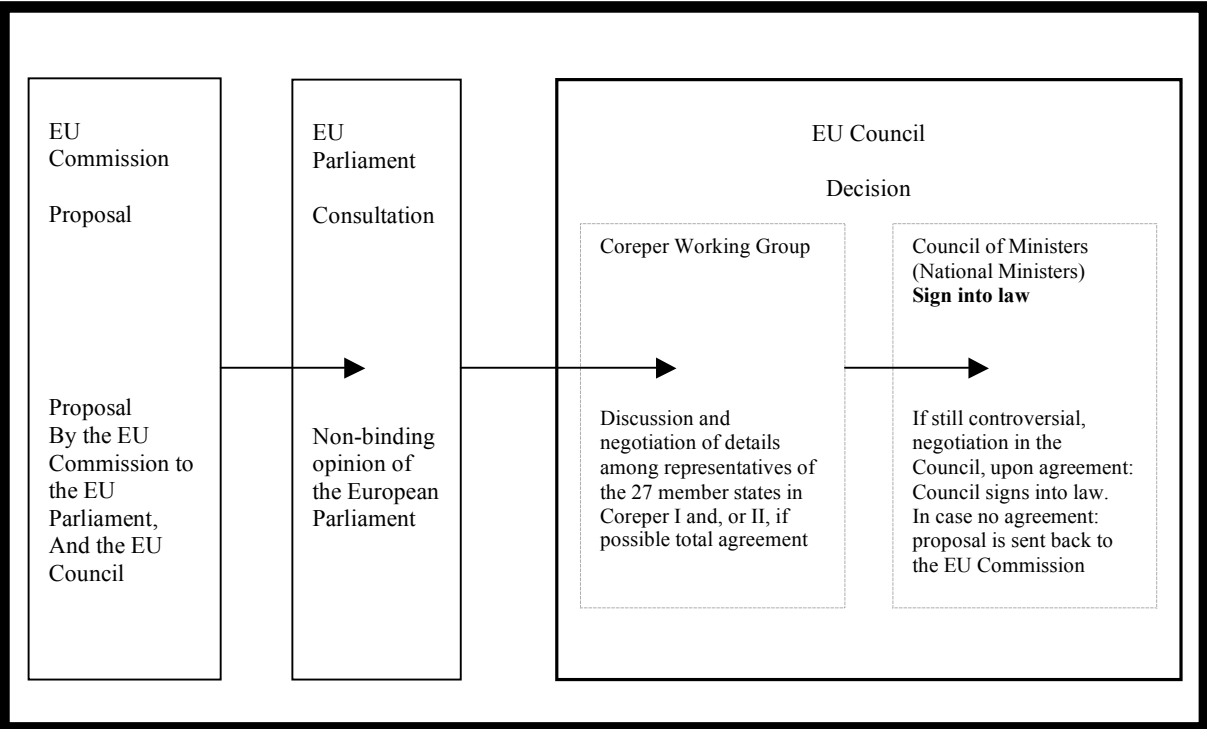
directive. The consultation procedure is to a degree a power play between the Council and the Commission, and thus between the Member States and the centralized organs of the EU. The procedure is however also intrinsically designed to the favour of the Commission, especially since the EU Council nowadays has a larger number of Member States than at the inception of the consultation procedure. The consultation method is most often used in matters pertaining to the first pillar, which includes the common market (Europa-nu 2010).

The co-operation procedure on the other hand accords a greater decision making role to the EU parliament (Cini 2005), giving the Parliament two readings. This route does not allow the Parliament any amendments (Cini 2005), but does require the Parliament's assent to a proposal for it to continue to the EU Council (Cini 2005). Choosing the consultation procedure thus wilfully bypasses the European Parliament as a decision maker. Perhaps this was a sure way for the Commission to override opposition and guard its conception of the Oil Stock Directive as a purely IEA focussed law. For if one studies the stance taken between the institutional actors on the issues, it is the European Parliament which deviates the most from the line of purely translating IEA standards and oversight into an EU directive.

The EP had three main proposals for the new directive that were not in any way incorporated in the final directive. In its proposed amendments, the EP introduces support of the European oil industry as a core concept to the draft. This is directly linked with the EP wanting to see more support for domestic EU oil exploration introduced as a cornerstone of the new directive. This would literally have meant more oil drilling, also inside the territory of the EU. Furthermore the EP wanted to see indigenous oil production accepted as equivalent of stored strategic reserves when of the same size. These amendments, which taken together can be seen as a larger role for the oil exploration industry, were defeated. It is the question whether this also would have been the case if the co-operation procedure had been followed. Under co-decision several countries in the Council theoretically could have backed the EP proposals, and worked to build common cause with the EP. Under the process of co-decision the EP has leverage, because co-decision the procedure gives involves the EP more in the negotiation process by giving it more formal power on paper as far as the decision making rules are concerned, as becomes clear from article 251 of the treaty of Nice (Official Journal of the European Union 2010).

When we return to the case of the Oil Stock Directive as proposed under the consultation procedure. We see that some Member States did enter into the Council negotiations sympathetic to proposals by the EP, like for instance on the above mentioned positions, for instance on the issue of counting domestic crude oil production as an equivalent to oil reserves held in tanks. It can be argued that the fact that there was no linking up of forces between the EP and the forces in the EU Council whom were of a similar opinion as the EP, can for a large measure be attributed to the fact that the decision making and the negotiation was done under the consultation procedure. A country with powerful friends on an issue in Parliament can lend much more weight to an issue than a single country defending a position on an issue in the Council on its own. The interview with the MEP from Luxembourg would support the view that nation states try to get the EP on their side of the argument. Under the consultation procedure however it is of no overweighing use to a member state in the Council to work together in consultation with the EP, in order to build a consensus between EU Council and EU Parliament. This becomes clearer from issues 9 and 10, which were proposed by the EP, and rejected in the EU Council despite the fact that certain Member States supported these measures.

Figure 2 showing the decision making model by the EU institutions under the Consultation Procedure



### **5.3 EU Commission proposal Oil Stock Directive**

The proposal for the new directive is built around convergence and oversight of oil stockholding practices across the Member States. Creating a centralized EU oil stockholding regime. The *raison d'être* and teleological underpinning of the new oil stock directive is built around the guiding principal of “convergence”. In the first place this is convergence of EU law towards IEA treaty guidelines<sup>1</sup>. Secondly by convergence is meant a deepening convergence between individual EU Member States’ requirements, to be brought about by the new and more comprehensive EU oil stock reserve directive. The aim being that by converging with the centralized EU requirements Member States will start to have more similar oil stock holding systems. Convergence is mentioned several times in the proposal for a new directive, recital 7, and 13. The inclusion of convergence in the recitals as a central tenet is important because it signals to the European Court of Justice the intended purpose of the law, and thus how the law is to be explained in jurisprudence. Should Member States or other parties bring a case at the court against it. It could also be a latch in the treaty used by the EU Commission in the ECJ. In case a member state was in breach of the directive, and the EU Commission would want to use all powers to make it comply.

The EU Commission its aim of convergence with the IEA is most directly expressed through issue 1, with its requirement for 90 days of oil reserves. The EU Commission its stance on issue 2 – not allowing indigenous production to be counted as part of this 90 days reserve – is there to stop Member States weakening their compliance on the first issue. This is in fact the teleological reasoning behind every of the issues ranging from 2 to 6. The teleological aim is that in the case of a crisis there are indeed 90 days worth of reserves actually in stock that can be immediately committed. The Commission its proposal to not count commercially operated stocks (issue 3) and to ban commingling (issue 4) are measures relating to the accounting of the reserve which aim to strengthen the IEA standard, by ensuring that in the case of a crisis it is indeed possible to float a full 90 days of reserves onto the market. Issues 5 (disallowing stocks to be held abroad) and 6 (banning options pertaining to the first right of purchase to oil stocks) are designed to ensure that national governments can immediately dispose with full sovereignty over their reserves, and thus easily commit them. Next to aiming at convergence, the initial directive by the EU Commission sees more government control as the solution to security of oil supply in the EU. Issues 7 and 8 are issues solely directed at this aim. The proposal for an obligatory central stock holding entity to be established in every member state is very much part of this government focused approach. However the curtailing of business control over oil reserve stocks is also furthered by the Commission stance on the already mentioned issues 4 and 5.

The directive thus is one of control and minimum standards. The actual proposals of the directive can be traced back to the EU Commission choosing for the most ambitious route of policy options proposed to it by the directorate general for energy<sup>14</sup> in its Commission staff working document: Impact Assessment on the Revision of the Emergency Oil Stock Legislation (EU Commission 2008). This staff-working document however only focuses on the security of reserve through oversight. The staff working document was prepared in a working group with the joined directorate generals of energy and transport (ENTR), the directorate general for economic and financial affairs (ECFIN)<sup>15</sup> and the directorate general for enlargement (ELARG).<sup>16</sup>

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<sup>14</sup> Directorate General, the Directorates-General of the EU Commission constitutes the civil service of the EU in service of its executive: the Commission. Each DG is presided over by a EU commissioner whom administers the directorate on behalf of the Commission. The directorate generals are government departments whom prepare legislative proposals. Through its DGs: “The Commission proposes EU legislation and checks it is properly applied across the EU”. (Europa.eu., 6 July 2010). [http://europa.eu/about-eu/institutions-bodies/index\\_en.htm](http://europa.eu/about-eu/institutions-bodies/index_en.htm)

<sup>15</sup> ECFIN, The Directorate-General for Economic and Financial Affairs (DG ECFIN) reports to the Commissioner for Economic and Monetary Affairs, Olli Rehn. It strives to improve the economic wellbeing of the citizens of the European Union, by developing and promoting policies that lead to sustainable economic growth, a high level of employment, stable public finances and financial stability. European Commission. (Europa.eu., 6 July 2010). [http://ec.europa.eu/dgs/economy\\_finance/index\\_en.htm](http://ec.europa.eu/dgs/economy_finance/index_en.htm)

<sup>16</sup> ELARG, The Directorate-General for enlargement. The DG for enlargement presides of the policies concerned with new countries assesses and monitors the state of applicants to the EU. (Europa.eu., 6 July 2010). [http://ec.europa.eu/dgs/enlargement/index\\_en.htm](http://ec.europa.eu/dgs/enlargement/index_en.htm)

All this in consultation with industry groups from the oil industry and the IAE (EU Commission 2008).

Table 1 Positions of the institutional actors on the 10 main issues during the legislating of the directive

Positions Directive 119/2009/EC	13 November 2008	22 April 2009	15 June 2009
Actors	EU Commission	EU Parliament	EU Council
1. Must the minimum oil reserve correspond to 90*** days of net oil imports, or 70 days of inland consumption*, whichever of the two quantities is greater. Or another figure?	90 days of average net oil imports, or 70 days of inland consumption whichever of the two quantities is greater.	90 days of average net oil imports, or 70 days of inland consumption whichever of the two quantities is greater.	90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.
2. Should indigenous oil production be allowed to count as an equivalent replacement for stocked oil reserve stocks?	No	No	Yes
3. Should oil reserve stocks that are operated and managed by commercial operators be allowed to count as part of the oil reserve stocks?	No	No	Yes
4. Should it be allowed for oil reserve stocks to be physically stored with normal operating stocks held by industry? (so called commingling of stocks)	No	Yes	Yes
5. Should it be allowed for oil reserves to be held outside of the member state its borders on which the obligation falls?	No	Yes	Yes
6. Should options in the form of tickets be allowed to count as part of oil reserve stocks?	No	No	Yes
7. Should a central stockholding agency** be obligatory in Member States for the control, sale, acquisition, and management of all oil reserve stocks?	Yes	Yes	No
8. Should commercial operators report their reserves on a weekly basis? (To the EU Commission)	Yes	No	No
9. Should measures be taken to ensure long term security of supply by creating a favourable climate for industry to prospect, and develop, new oil fields?	No	Yes	No
10. Should security of energy supply be linked with a EU foreign policy towards the EU its neighbour countries?	No	Yes	No

\*Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products: "Inland consumption is the sum of the aggregate 'observed gross inland deliveries', as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, of the following products only: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil" Official Journal of the European Union. 9 October 2009

\*\*Central Stock Holding Entity, (abbr.: CSE): Government Agency through which all oil reserves are managed and records kept of oil in storage. In the Commission proposal the CSEs would serve as the sole intermediary for the buying and selling of oil stocks.

\*\*\* IEA, energy security. 90 Days of oil imports is the benchmark set by the IEA for its members.

[http://www.iea.org/subjectqueries/keyresult.asp?KEYWORD\\_ID=4103](http://www.iea.org/subjectqueries/keyresult.asp?KEYWORD_ID=4103). 26 August 2010

## **5.4 The position of the European Parliament on the 10 issues**

Though the consultation procedure does not give the European Parliament any real decision making powers, since the EP its approval is not necessary for legislation to proceed to the EU Council. It is important to know the position of the EP to see whether it wields influence. Operating under the consultation procedure the EP would have to achieve this through its power to persuade the EU Council by the strength, or popular appeal, of its arguments; proposed as amendments. It can also be informal influence along the NF logic of elite socialization or spill over, both most likely to occur through specialized expertise on the side of MEPs. We can however not simply assume EP influence to be present there where the EU Council takes on board EP amendments, despite not being formally bound by the EP its proposals. In an interview with a European parliamentarian it became apparent that national governments can successfully influence MEPs to back their native country its position. One MEP whom voted for the amendments to the Oil Stock Directive on the 22 April 2009 said that she consulted with national administrators of her political party – at that time the party in government– on how to vote on the Oil Stock Directive. She was indeed given a voting advice (Interview Luxemburg MEP 2010). The voting advice on an issue such as weekly reporting was the same as her country its position in the EU Council (Interview Luxemburg MEP 2010).

The EP endorsed the aim of the directive for greater oil security through better-kept reserves along the IEA requirements (European Parliament 2009). Thus, the EP endorsed the core of the directive wholeheartedly. It differed with the Commission on the following points however: 1. Commingling: whether oil stocks held for different purposes, and under different ownership, can be stored together. The EP came out in favour of upholding the possibility of storing stocks together. 2. The holding of oil stocks outside of individual Member States borders. The EP, in opposition to the Commission, was for this practice to be allowed since several Member States depend heavily on out of country storage. 3. The European Parliament came out against weekly reporting. 4. The European Parliament proposed amendments to support the oil industry to do more exploration and exploitation of oil in the European geographical realm, and beyond (European Parliament 2009).

This last amendment by the European Parliament reflected a sincerely held belief among MEPs that the availability and affordability of oil is driven by the future of oil exploration, and that higher extraction costs will form part of the future of oil.<sup>17</sup> This standpoint is based on information from the oil industry. EU Commission officials and Euro-parliamentarians keep a close tab on the latest developments in the oil industry through the European Energy Forum.<sup>17</sup> Whose membership is made up of MEPs, and professionals from across the board in the oil industry; “The European Energy Forum (EEF), a non-profit making association, was founded in the beginning of the 1980’s, on the initiative of MEPs who wished to avoid energy decisions being based on inadequate technological, economic and geopolitical considerations or born of ideological prejudices. The founders intended that, when presented with a proposal, MEPs should have access to information on the subject, provided by organisations with unquestionable expertise” (European Energy Forum 2010). It also is worth mentioning here that in April 2008 there was a call for more government support for the oil industry from the head of the IEA, Mr. Tanaka: “There is a clear need for governments and industry to do all they can to increase the output”(IEA 2008). “Investment is one of the main challenges we are facing in the global energy sector”, Mr. Tanaka said: “USD 22 trillion in investment will be needed in energy-supply infrastructure by 2030. The oil sector alone needs USD 5.4 trillion.”(IEA 2008). These sums surpass the economies of the individual Member States of the EU. The issue of additional needed

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<sup>17</sup> European Energy Forum, European Oil and Gas Innovation Forum, *Technology for a Sustainable Energy Future* “34% of the worldwide oil production was produced offshore in 2004. This should increase to 40% by 2015. This is mostly due to the increase of production in the deep offshore, whose share should move from 10% in 2004 to 25% in 2015. Within one decade, oil production from the deep offshore should increase by 11,5% per year.” This means the end of ‘cheaply’ won oil. For enormous investments are required to develop the technologies which will make it possible to exploit this oil in a safe way Institut Francais du Pétrole has estimated that 40% of the oil and gas will be in water depths from 0-500 meters, 20% between 500 and 1500 meters, and 40% from 1500 to 3000 meters. The combination of water depth environment, reservoirs and lack of infrastructure will require new solutions” (European Energy Forum. European Oil and Gas Innovation Forum, *Technology for a Sustainable Energy Future*, 2010, p.2).



investments that will be needed in the oil industry is well known with many MEPs, since every MEP present at the vote on the Oil Stock Directive is also a member of the European Energy Forum, where the issue of the need for investments is widely discussed.

Another point of interest, though not politicized into an issue. Is that the European Parliament also backed the inclusion of a European foreign energy policy as a point of the directive (European Parliament 2009). Thus the EP more ambitious ideal view of the new oil directive hinged on inclusion of a strategic policy on energy. Itself based on a teleological understanding of the green paper (European Parliament 2006), and the accompanying memo. Which identify a race for energy, and thus a need for acquiring energy abroad and at home. Which can be summed up as: new energy and new sources of crude oil.

The EP opinion also explicitly reasserts Member States rights (European Parliament 2009). By championing the right of Member States to exercise more flexibility than in the Commission proposal (European Parliament 2009).

These additional ambitions the European Parliament introduced to its proposed view of the Oil Stock Directive first of all sought to alter the teleological underpinning of the directive. Which in its initial draft form emphasizes convergence with the IEA, and among EU Member States. The Commission literally uses the phrase convergence all over the proposed draft. The emphasis on convergence is clearly and deliberately used as often as possible by the Commission to also establish its commanding role in the Oil Stock Directive its implementation. The EP wanted to see convergence amended into compatibility: with the purpose of allowing Member States to retain a level of decision making power over their own stockholding arrangements. It also proposed many direct amendments to the original articles to this same end. In a separate proposal the EP sought to infuse more support for the oil industry.

The difference emphasis between the Commission and the EP in the draft stages is that the Commission designed a directive concretely set its aim at fostering convergence of the EU its Member States practices with the tried and tested regime of the IEA. Whereas the EP its analysis proceeds more from the point of view of EU Member States oil storage practices, as well as of Industry.

To this end the EP wanted to see convergence exchanged for compatibility in the document wherever it was mentioned. This change would have altered many aspects of the directive, even if all the other original Commission proposals would remain unaltered. It would change the way the European Court of Justice understands and explains the directive. It Member States would be obliged to create compatible systems, but not uniform regimes, the enforcement Many of its proposals for amendments to change the underlying idea behind the directive were however not accepted. Some important amendments giving Member States more freedom of choice were however successfully suggested, the most important of which was to continue allowing stockholding of oil reserve stocks across national borders. This allows flexibility for Member States cut off from the European oil infrastructure grid. So they can choose stockholding arrangements suited to their geographic and organisational situation. Especially imported in the case of the small island nations such as: Ireland, Cyprus and Malta.

By placing foreign policy on the agenda in connection to the Oil Stock Directive the EP was linking different policy areas to each other across different pillars of the EU its structure, and across different jurisdictions of policy making. The EP was following the lead by the Green Paper, which calls for a EU external energy policy (EU Commission, 2006, p.5). This initiative failed. In the proposal by the EU Commission the directive is purely an instrument of the Common Market. Foreign policy is still the prerogative of the Member States, though the EU Commission has shown a willingness to conduct foreign policy initiatives on energy. And oil reserves serve in the first place to address the instability of oil producing countries, thus foreign countries. Oil reserves are a domestic policy response to foreign policy pressures and uncertainties. and also competitive internal energy markets.

The Commission Green Paper acknowledges business as partners. The business world is identified as the sector most likely to invest in energy infrastructure (EU Commission, 2006, p.5). In the directive designed by the EU Commission the emphasis however is squarely on compliance with the stock holding regime. The green paper identifies businesses as vital to the energy infrastructure of the EU. Governments are not expected to build tanks and storage facilities. In line with this analysis, the EP infuses the idea of business as partners of the EU energy policy into its proposed amendment of

the directive. This also to redress the fact that the initial directive proposed sees more government and less business, as the solution to the EU oil stock reserve security.

This also results in the EP wanting to see tickets maintained, as well as stockholding across national borders. Also in line with its more laissez fair approach towards business involvement the EP wanted to see the replacement of the aim of: ‘Convergence’ between oil stock holding practices wholesale across the entire proposal.

Another point is the mention of affordable prices for consumers and industry as an intrinsic policy goal of the directive; the EP does explicitly do this, while the EU Commission does not. The EU Commission clearly communicates one priority only: “convergence” of EU oil stock holding practice with IEA standards.

## **5.5 Positions of the Member States in the EU Council**

### 5.5.1 Introduction

In this chapter the proceedings in the negotiation process in the EU council are clarified by stating the positions in the negotiation process of each individual EU member state on the issues in the Oil Stock Directive. Finally, at the end of the negotiation process in the EU Council, all the member countries decided to vote unanimously in favour of the directive.

As an opening overview the 27 Member States’ positions on the 10 issues are listed in a comparative table. These positions reflect the stance taken during the negotiation process, not the position taken on the final vote. This allows for a clear comparison of different key moments in the forming of the final outcome on the directive.

The 27 Member States are listed alphabetically by country name, with their positions on the 10 issues listed numerically from 1 through 10. Each country its position on the 10 issues is preceded by a general introduction on the country its positions, explaining the background of special concerns. The source of information for these ten issues is also stated. In line with the reliability sought and explained in chapter 3 sources can be either: interviews with those officials identified in chapter 3, or specialized publications, or official government communications. The introduction to each country also mentions which issues were deemed salient to the specific country in question. For each country it is mentioned whether the country in question is an IEA member or not<sup>18</sup>.

Saliency - as used here - describes the level of importance Member States attached to specific issues in the directive. Thus saliency in itself does not refer to a position taken, either for or against, on any issue. This is why the position taken by a member state on an issue is mentioned separately. This notwithstanding, it is to be noted that where countries were willing to communicate a clear standpoint in the council, this was almost always done because they felt the issue to be salient to their own interests first and foremost. A clear for or against on an issue does reveal a lot on the saliency of the issue to the country in question. If only that they felt they could ill afford to stand with the status quo for expedience sake during the negotiation process.

This last factor shows that in the case of the EU Council negotiations between the Member States, there is a high degree of congruence between the two-distinguishable characteristics of saliency when communicated; as both meaning: “The importance of issues and the degree to which issues are a problem”(Wlezien, 2005, p. 1). This congruence can however not always be presupposed when the term saliency is used (Wlezien, 2005, p.1).

Therefore we interpret the level of saliency also as a measuring gauge reflecting the degree to which an issue was problematic, as well as ipso facto being important to the specific member country. This is not a superfluous point because it sheds light on the dichotomy of how every institutional actor

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<sup>18</sup> The non IEA members among EU Member States being: Bulgaria, Estonia, Cyprus, Latvia, Lithuania, Malta, Romania and Slovenia.

and every member state on the one hand can communicate the Oil Stock Directive to be policy they supported, and that it constituted policy that was important, relevant and needed. Yet on the other hand most of these actors subsequently took divergent and contrasting positions on the 10 issues we identified as important in the negotiation process. These were however only seldom communicated to have been problematic. Exceptions were openly communicated by negotiating parties. Still, because of this there has been made a choice to refrain from introducing the term: “most important problem”, as used by (Wlezien 2005 p.1.). Instead where an issue was considered to be more problematic to a member country this is made clear by communicating it as of a high degree of salience. Where member state officials qualified their country its position themselves by equating this with a red line. This category of the highest salience is stated.

The negotiation proces in the EU Council on the proposed Oil Stock Directive took part at the working group, and Coreper levels. The subsequent amendments to the original proposal by the EU Commission ended up producing, on the first 8 issues identified in this paper, a different directive than conceived by the Commission. Neither did the Council take onboard the two 2 issues proposed through consultation by the European Parliament: more energy exploration and a foreign policy dimension to energy security of supply. Even though there were several representatives of the Member States in the EU Council whom communicated these issues to be of saliency.

Though all Member States welcomed new legislation on the issue of oil stock reserve holding, only a few Member States came into the negotiation process endorsing the proposals by the Commission. France being the only member state to endorse the proposed directive by the Commission wholesale and completely. Most Member States wanted to see the Commission proposal changed on key issues. To some Member States some of the provisions of the Commission were literally unacceptable. Other Member States had only one issue, or a limited number of issues, with immediate saliency to them. Subsequently focussing their effort to changes in those issues only.

On issue 8, the weekly reporting of oil stocks to the Commission, the opposition was unanimous among member state countries, with the exception of France. On other issues countries with strongly articulated opposition to a particular issue, or set of issues, managed to build consensus for their argument against a provision. Member States attached different levels of saliency to different issues.

Table 2 EU Member States' positions in the EU Council on the issues 1 through 10

	Issue 1	Issue 2	Issue 3	Issue 4	Issue 5	Issue 6	Issue 7	Issue 8	Issue 9	Issue 10
	The minimum oil reserve should be 90 days of average net oil imports, or 70 days of inland consumption whichever of the two quantities is greater	Should indigenous oil production be allowed to count as an equivalent replacement for stock oil reserve	Can oil stocks that are operated and managed by commercial operators be allowed to count as part of the oil reserve stocks?	Should it be allowed for oil reserve stocks to be - without special provisions - physically stored with normal operating stocks held by industry ? (so called stocks)	Should it be allowed for oil reserves to be held outside of the member state its borders on which the obligation falls?	Should options in the form of tickets be allowed to count as part of oil reserve stocks?	Should a central stockholding agency* be obligatory in Member States for the control, sale, acquisition, and management of all oil reserve stocks?	Should commercial operators report their reserves on a weekly basis?	Should measures be taken to ensure long term security of supply by creating a favourable climate for industry to prospect, and develop, new oil fields?	Should security of energy supply should be linked with a EU foreign policy towards the EU its neighbour countries?
Austria	Yes	Yes	Yes	Yes	--	--	No	No	Yes	Yes
Belgium	--	--	--	--	--	--	--	--	--	--
Bulgaria	Other*	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Cyprus	Other*	Yes	Yes	Yes	Yes	Yes	No	No	--	--
Czech Republic	Yes	Yes	Yes	Yes	Yes	--	--	No	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	--
Estonia	--	--	--	--	--	--	--	--	--	--
France	Yes	--	No	No	No	No	Yes	Yes	--	--
Finland	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes
Germany	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	Yes
Greece	Yes	Yes	Yes	Yes	No	Yes	--	No	--	--
Hungary	Yes	No	No	No	Yes	No	Yes	No	No	No
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	--
Italy	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	-
Latvia	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	Yes
Lithuania	--	--	--	--	--	--	--	--	--	--
Luxembourg	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	--
Malta	--	--	--	--	--	--	--	No	--	--
Netherlands	Yes	Yes	Yes	Yes	Yes	Yes	No	No	--	--
Poland	--	--	--	--	--	--	--	--	--	--
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	--	--
Romania	--	--	--	--	--	--	--	--	--	--
Slovakia	Yes	--	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Slovenia	Yes	--	Yes	No	Yes	Yes	Yes	No	--	--
Spain	--	--	--	--	--	--	--	--	--	--
Sweden	Yes	--	Yes	Yes	Yes	Yes	No	No	--	--
UK	Other*	No	Yes	No	No	Yes	No	No	--	--

-- Explanatory note to the table, where there is no standpoint given for the country in question. This could be either because the country in question did not communicate a position, or because research was unable to bring it to light. It is thus an unknown. Malta is a special case in this regard, Malta did communicate its positions, but disallowed its standpoints to be quoted or published. France its positions are stated despite the fact that France did explicitly not wish to comment on its positions itself. However, reliable first hand accounts of the positions of the French standpoints during the negotiation process are known. These accounts are reliable as understood by the criteria set in chapter 3. They are also admissible, because there is not an embargo on this information.

\* Where the standpoint taken by a member state reads: 'Other', the country in question raised serious objections concerning the 90 daysoil reserve, but did however not vote an outright: 'No', as such. Instead the objections of a number of countries in question were assuaged by promising them a transition period for compliance with the stipulated 90 days oil reserve. This transition period did persuade a number of the new Member States to vote in favour of a 90 days reserve despite serious objections and concerns.

## 5.5.2 EU Member States' positions:

### ***Austria***

Austria is a founding member of the IEA(IEA 2010). Issues 4 and 8 held the highest saliency to Austria, with Austria strongly opposing the weekly reporting of oil stocks.

All of the 10 positions on the issues are based on the following source: Questionnaire representative BMWFJ, 23.9.2010.

- 1) Austria supported 90 days of reserves.
- 2) Austria is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves.
- 3) Austria is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Austria was strongly in favour of allowing the commingling of oil stocks.
- 5) Austria did not express an opinion in the Council whether it should be allowed for a member state to hold stocks on the territory of other countries.
- 6) Austria communicated that it did not voice an opinion in the Council on whether tickets should be allowed to maintain and form a part of the oil reserve stock.
- 7) Austria is of the standpoint that an oil stock agency should not be obligatory.
- 8) Austria was strongly of the opinion that oil stocks should not be reported on a weekly basis. This issue carried salience with Austria.
- 9) Austria sees energy security as important, and reacted positively to the EP amendment to see long term energy provisions put in place.
- 10) Austria sees a EU foreign policy dimension to energy security as positive.

### ***Belgium***

Belgium is a founder member of the IEA, being a member to the oil stock holding regime since 1974 (IEA 2010). Belgium did not comment on its positions on the Oil Stock Directive. This is to say that neither: the permanent representation of Belgium at the EU Council, nor the negotiator for Belgium whom was present at the negotiation of the Oil Stock Directive, nor the Belgium ministry for energy, wished to comment on the Oil Stock Directive, or Belgium's position on the issues in the directive.

### ***Bulgaria***

Bulgaria is not an IEA member(IEA 2010). All of the 10 positions on the issues are based on the following source: Interview Bulgarian permanent representative, 8.6.2010.

The issues, which carried salience with Bulgaria, were the issues: 1, 6, 9 and 10.

- 1) Bulgaria did have issues with 90 days of reserves. Seeing it as a very ambitious, very expensive and not easily achieved benchmark. This was an issue with high saliency for Bulgaria.
- 2) Bulgaria is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves.
- 3) Bulgaria is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Bulgaria is of the opinion that commingling should be allowed.

- 5) Bulgaria is of the opinion that it should be allowed for a member state to hold stocks on the territory of other countries.
- 6) Bulgaria is of the opinion that tickets should be allowed. This position carried salience with Bulgaria, though not of an overriding nature.
- 7) Bulgaria is of the standpoint that an oil stock agency should not be obligatory. This issue has high salience for Bulgaria.
- 8) Bulgaria standpoint is that oil stocks should not be reported on a weekly basis. This issue carried salience with Bulgaria.
- 9) Bulgaria sees energy security as important.
- 10) Bulgaria sees a foreign policy dimension to energy security as important. This has salience to Bulgaria

## **Cyprus**

Cyprus is not an IEA member state (IEA 2010). The directive was problematic to Cyprus because of the size of the oil reserve, and the ban on out of country stockholding, the planned ban on tickets aggravated the problematic nature of the Commission proposal for Cyprus. All of the 10 positions on the issues are based on the following source: Interview Cypriote permanent representative, 3.6. 2010.

The issues with salience to Cyprus were issues: 1, 5, 6, and 7.

- 1) Cyprus did at first see 90 days of reserves as too high a reserve to be feasible to maintain. This was an issue of great salience to Cyprus.
- 2) Cyprus is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves. This issue did not have salience with Cyprus.
- 3) Cyprus is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Cyprus is of the opinion that commingling should be allowed.
- 5) Cyprus is of the opinion that it should be allowed for a member state to hold stocks on the territory of other member countries. This issue carried great salience with Cyprus.
- 6) Cyprus is of the opinion that tickets should be allowed. This issue has saliency to Cyprus, with Cyprus coming out strongly in favour of ticketing. This issue has great saliency to Cyprus.
- 7) Cyprus is of the standpoint that an oil stock agency should not be obligatory.
- 8) Cyprus standpoint is that oil stocks should not be reported on a weekly basis. This point carried great salience with Cyprus.
- 9) Cyprus did not express an opinion on this issue.
- 10) Cyprus did not express an opinion on this issue.

## **Czech Republic**

The Czech Republic has been an IEA member since 2001(IEA 2010), and it maintains adequate oil reserve stocks. Until now the Czech Republic has done this through full state ownership and control, without any commercial operators involved in the process. The Czech Republic is looking for ways to change this practice though. The main reason being that “public stockholding is extremely expensive” (Representative Czech department of oil emergency 2010).

A further point of interest is the fact that the Czech Republic holds its reserve stocks under the IEA agreement mingled with regular stocks, thus: “commingling”. Since the proposed Oil Stock Directive claims to harmonize the EU practice with those of the IEA, this proves issue 4 a contradiction to the communicated purpose of the directive. All of the 10 positions on the issues are based on the following source: Interview Czech representative department of oil emergency, 7.7.2010.

The issues with salience to the Czech Republic were issues: 4, 5, 9 and 10.

- 1) The Czech Republic did not communicate to have an issue with the minimum number of days of oil reserves.
- 2) The Czech Republic was of the opinion that indigenous production should be able to count as equal to physically stored oil reserve stocks.
- 3) The Czech Republic is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) The Czech Republic is of the opinion that commingling should be allowed. This is standard practice in the Czech Republic, perfectly inline with the IEA regime. For this reason this issue had saliency with the Czech Republic.
- 5) The Czech Republic is of the opinion that it should be allowed for a member state to hold oil stocks on the territory of another country. The saliency for the Czech Republic was intermediate. The Czech Republic does not rely heavily on out of country storage, but has an agreement with Germany on this issue.
- 6) The Czech Republic was neither for or against tickets remaining allowed to form part of the oil reserve stock.
- 7) The Czech Republic did not comment on the issue of an obligatory agency either way.
- 8) The Czech Republic was against weekly reporting.
- 9) The issue of energy supply diversification has high saliency to the Czech representation. Speaking in favour in principle of more drilling and exploration for oil being allowed, but not paid from EU budgets.
- 10) The Czech representation communicated that a “ good, consistent and common external energy policy” (Representative Czech department of oil emergency 2010). Is endorsed, and considered part and parcel of any energy policy.

## **Denmark**

Denmark is a founder member of the IEA(IEA 2010). As an oil producer Denmark attached a great deal of saliency to being allowed to count internal production as an equivalent of held stocks. All of the 10 positions on the issues are based on the following source: Interview Danish permanent representative, 4.6.2010.

The issues with most salience to Denmark were Issues: 2, 6 and 8, all 3 carrying special salience to Denmark.

- 1) The Danish representation subscribed to the standpoint that 90 days of reserves are adequate.
- 2) Denmark is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves. Denmark has domestic oil production substantial enough to make an impact.
- 3) Denmark is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Denmark is of the opinion that commingling should be allowed.
- 5) Denmark is of the opinion that it should be allowed for a member state to hold stocks on the territory of other member countries.
- 6) Denmark is of the opinion that tickets should be allowed. Denmark come out strongly in favour of ticketing. It is an issue which carried great salience with the Danish.
- 7) The Danish standpoint is that an oil stock agency should not be obligatory.
- 8) The Danish standpoint is that oil stocks should not be reported on a weekly basis. This point carried great salience with Denmark.
- 9) Denmark did not express an opinion on this issue.
- 10) Denmark did not express an opinion on this issue.

## **Estonia**

Estonia is not an IEA member(IEA 2010).

Estonia did not comment on its position on the Oil Stock Directive.

## **France**

France declined to comment on their positions in the Oil Stock Directive. The chief negotiator, whom negotiated the directive in the EU council for France, personally declined all further comment on the French position. This includes declining to comment on the identified issues 1 to 10, after the French permanent representation accepted to receive these, and review them.

The French position however was unambiguous to those present at the EU council and EU Commission. France had strong and clear positions on the issues identified. To most parties involved it is clear that France considered the whole Oil Stock Directive of high salience, especially from issues 1 to 8. The fact that the French sided with the Commission on these 8 issues from the outset is very clear to most other Member States representatives, and third parties, involved in the negotiation process in the EU council. Thus the French position can be reconstructed through their account. In the end it can be said that the French considered the whole directive of high salience as a whole, and that the Commission proposal was seen as the right way to go (Interview Representative European Commission 12.8.2010 & Interview Danish permanent representative, 4.6.2010).

France is an IEA member (IEA 2010). Among the major industrialized states of the West the French are late signers to the IEA protocol, having signed in 1992(IEA 2010). Though all issues had salience to France. Issues 1, 3, 5, 6, 7 and 8 especially were of high salience to France. The French support for the Commission proposals on these issues were designed to: ensure central government oversight, to ensure Commission oversight through the weekly reporting to the Commission, eliminate business as a party to oil stock holding, ensure the availability of emergency stocks in each given country in case of an energy crisis. All of the 10 positions on the issues are based on the following source: Interview representative EU Council Energy Policies Unit, 7.7.2010.

The salience of the issues to France was not communicated directly by France. However, according to third party insiders to the negotiation process. France considered the issues: 1,2,3,4,5,6,7 and 8 of high salience.

- 1) The standpoint of the French Republic is that 90 days of reserves are adequate. The number of days of oil stock reserve that countries keep were an issue of high salience to France.
- 2) France did not comment on this issue. Neither were any comments on the French position forthcoming by knowledgeable and reliable – as understood in chapter 3 - third parties.
- 3) France is of the opinion that oil stocks that are operated and managed by commercial operators should not be allowed to count as part of the oil reserve stocks.
- 4) France is of the opinion that commingling should not be allowed.
- 5) France is of the opinion that it should not be allowed to hold stocks on the territory of other member countries. This was a point of high salience.
- 6) France is of the opinion that tickets should not be allowed to constitute part of the oil stock reserve. This issue had high salience for France.
- 7) France is of the opinion that an oil stock agency should indeed be obligatory and that it should control all oil reserve stocks, and all transactions pertaining to oil reserve stocks. This issue had a very high level of salience to the French Republic.
- 8) France is of the opinion that oil stocks should indeed be reported on a weekly basis.
- 9) France did not express an opinion on this issue.
- 10) France did not express an opinion on this issue.



## **Finland**

Finland has been an IEA member state since 1992 (IEA 2010). The standards of the directive were unproblematic, and uncontroversial to Finland because Finland can meet its requirements without any major readjustments to its national policies on oil reserve stocks. Finland has a long national policy tradition of maintaining high security of energy supply. All of the 10 positions on the issues are based on the following source: Interview Finish Negotiator, 5.7.2010.

Issues with salience for Finland were the issues: 8, 9 and 10.

- 1) Finland subscribed to the standpoint that 90 days of reserves are adequate. This issue has no saliency to Finland. Finland as a matter of course maintains oil reserves of up to 100 days plus.
- 2) Finland is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves. This issue did not have high saliency.
- 3) Finland is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Finland is of the opinion that commingling should be allowed.
- 5) Finland is of the opinion that it should be allowed for a member state to hold stocks on the territory of other member countries.
- 6) Finland is of the opinion that tickets should be allowed.
- 7) Finland is of the opinion that an oil stock agency should not be obligatory.
- 8) Finland is of the opinion that oil stocks should not be reported on a weekly basis.
- 9) Finland considers energy self sufficiency as a matter of high salience. It did however not support the EP proposal.
- 10) Finland considers energy security as an issue of high salience.

## **Germany**

Germany is a founder member of the IEA(IEA 2010). Germany its priorities were to deter bureaucracy, and ensure availability of sufficient oil stocks in a crisis situation. Of these two concerns the wish to keep bureaucracy in check was articulated most clearly by the German representation in the Council negotiations.

Furthermore, as a result of the concern on emergency stock availability Germany is critical of the ticket system. The main reason being that tickets do not create oil reserve stocks. Tickets earmark part of normal industry stocks as potential reserve stock, since it is an option on normal held stocks by industry which one counts as part of one's oil reserve. Because of this, in Germany no more than 10% of the oil reserve is allowed to be held in the form of tickets. Source: Representative German Ministry for Energy and Technology 2010. Directly linked to this is the reluctance of Germany to storage stocks outside of its national borders. Again because it might hamper availability in the event of an energy crisis. All of the 10 positions on the issues are based on the following source: Questionnaire representative BMWi, 27.7.2010.

Issues with salience to Germany were the issues: 1, 3, 5, 7, 8.

- 1) The standpoint of the Federal Republic of Germany is that 90 days of reserves are adequate.
- 2) The Federal Republic of Germany is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves. With the understanding that this indigenous oil production can alleviate short term supply deficiencies in case of an energy crisis.
- 3) The Federal Republic of Germany is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) The Federal Republic of Germany is of the opinion that commingling should be allowed. Not in the least because of technical details. Such as the need, when storing oil in oil holding facilities, to refresh oil stocks.
- 5) The Federal Republic of Germany is of the opinion that it should be allowed to hold stocks on the territory of other member countries. But reluctantly so. It does not see this as a good way of ensuring the availability of oil stock reserves.
- 6) The Federal Republic of Germany is of the opinion that tickets should be allowed to form part of the strategic oil reserve stock. However it is not ideal to allow tickets to make up such a large share of the oil reserves as is currently allowed, because tickets do not create oil reserve stocks
- 7) The Federal Republic of Germany is of the opinion that an oil stock agency should not be obligatory. This notwithstanding Germany sees an agency as an effective instrument.
- 8) The Federal Republic of Germany is of the opinion that oil stocks should not be reported on a weekly basis.
- 9) The Federal Republic of Germany did not express an opinion on this issue.
- 10) The Federal Republic of Germany is of the opinion that these policies are intricately linked with the logic of the directive. "Aus deutscher Sicht sind beide Politiken ins Zusammenhang zu sehen"

## **Greece**

Greece is an IEA member (IEA 2010).

With the exception of holding fast to the principle that oil reserve stocks should be held inside national territory, Greece did not express any view on the level of salience of the issues. All of the 10 positions on the issues are based on the following source: Interview representative Greek Ministry of Energy, 3.6.2010.

- 1) The Greek position is that oil reserve should be calculated in days of net imports.
- 2) Indigenous oil production should be allowed to be a replacement for oil stock reserves. Greek oil law 3054/2002 states that indigenous production allows operators to lower their maintained stocks to 25% of minimum oil reserves
- 3) Greece is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Greece is of the opinion that commingling should be allowed.
- 5) Greece is of the opinion that oil reserve stocks should be held inside national territory.
- 6) Greece is of the opinion that tickets should be allowed. This notwithstanding, Greece only holds physically held oil reserve stocks itself. Thus no reserves in the form of tickets.
- 7) Greece did not express an opinion on the obligatory nature of an oil stock agency.
- 8) Greece opposed weekly reporting. The Greek representative identifies an ongoing discussion in favour of weekly reporting in the EU.
- 9) No opinion was expressed.
- 10) No opinion was expressed.

## **Hungary**

Hungary joined the IEA in 1997(IEA 2010).

Hungary stated that all the issues were salient to Hungary, but that especially issues 1, 5, 7, and 8 were of high salience to Hungary. All of the 10 positions on the issues are based on the following source: Interview Hungarian Negotiator, 20.8. 2010.

- 1) The Hungarian position is that 90 days of average daily net oil imports (in line with the IEA methodology) is just right. This was a salient issue to Hungary.
- 2) Hungary was not in favour of allowing indigenous oil production to count as an equivalent replacement for oil stock reserves. “Not a favoured option”(Hungarian Negotiator, 2010).
- 3) Hungary was against allowing oil stocks operated by commercial operators to count as part of oil reserve stocks. “Not a favoured option”(Interview Hungarian Negotiator, 2010).
- 4) Hungary is against allowing commingled stocks to count as part of oil reserve stocks
- 5) Hungary believes that oil reserve stocks should be allowed to be held outside of Member States’ borders, “but under clear, strict, predefined conditions laid down in the EU legislation”(Hungarian Negotiator, 2010). This was a salient issue to Hungary.
- 6) Hungary was against allowing tickets to form part of the oil reserve stocks.
- 7) Hungary was of the opinion that a national agency should oversee all the oil stock transactions and management. This was a salient issue to Hungary.
- 8) Hungary was against weekly reporting. This was a salient issue to Hungary.
- 9) Hungary was not in favour of measures to support the oil industry to ensure long term security of supply.
- 10) Hungary was not in favour of a foreign policy dimension to the EU energy policy being included in the Oil Stock Directive.

## Ireland

Ireland is a founding member of the IEA (IEA 2010). Despite the fact that Ireland has been an IEA member for well over 30 years, Ireland does not have enough storage facilities to maintain 100% of its oil reserves at home. This is attributed to the fact that Ireland is an island nation. Ireland placed very high saliency on maintaining tickets, and out of country storage of oil reserves.

On issue 3 it is noteworthy that Ireland “counts those stocks held by industry for more than 55 days as part of the strategic reserve” (Interview NORA<sup>19</sup> representative 2010). This exempts companies from having to pay the levy for the upkeep of the national Irish oil reserve of 2 euro cents per liter on oil held by industry (Interview NORA<sup>19</sup> representative 2010).

On issues 1 and 3 it is noteworthy that though Ireland has used the accounting of industrial held stocks to account for 9% of its national reserve. Ireland is now moving away from that model towards a situation where 100% of stocks are dedicated as oil reserve stocks. Though this still does not exclude the use of tickets and out of country storage as part of this dedicated strategic oil reserve. The following 10 positions are based on the following sources: Interview NORA<sup>19</sup> representative of the Irish Ministry of Energy 10.9.2010 and Interview Irish permanent representative 30.7.2010

To give an idea of the degree of impact the issues have on the Irish system. The reality of Irish strategic oil stocks as held under the IEA provisions is broken down per category in the table below. This immediately gives an example of how stockholding arrangements look in a country that uses such a flexible approach such as Ireland does. It also shows what kind of an impact the measures, especially in the field of industry stocks and ticketing, proposed by the EU Commission would have.

*Table 3 Number of days of oil stocks held by Ireland at 1 July 2009 under IEA methodology*

	In Ireland (days)	Abroad (days)	Overall Total
Agency stocks - Wholly owned through NORA <sup>19</sup>	36	32	68
Ticketed (Stock tickets)	1	13	14
Industry Stocks	33	0	33
Total	70	45	115

Source: Department of Communications, Energy and Natural Resources, Oil supply division. (NORA 9 August 2010)  
<http://www.dcenr.gov.ie/Energy/Oil+Supply+Division/Ireland+s+Current+Stock+Levels.htm>

The issues with salience to Ireland were: 1, 3, 5, 6, 7, and 8.

- 1) The issue of 90 days of oil reserves had high saliency to Ireland. Not because of the size of the reserve, but its make up.
- 2) Indigenous oil production as a replacement for stocked reserves did not have any saliency to Ireland. Ireland did not take a standpoint on the issue. Not a point of saliency to Ireland.
- 3) Ireland is of the opinion that oil stocks that are operated and managed by commercial

<sup>19</sup> NORA: National Oil Reserves Agency is Ireland’s Central Stockholding Agency, established by the Irish Ministry of Energy. “NORA is the State Agency responsible for the holding of national strategic oil stocks. Such stocks may be held directly by the Agency itself or on its behalf by third parties in Ireland and/or in EU Member States with whom Ireland has concluded a Bilateral Oil Stockholding Agreement. NORA receives no Exchequer funding and its ongoing activities are 100% funded by a levy imposed on certain oil products while it borrows from commercial banks in order to purchase NORA wholly owned oil stocks. The levy is 2.0 Euro cent per litre”. (NORA 8 August 2010).  
<http://www.nora.ie/>

operators should be allowed to count as part of the oil reserve stocks. This was a salient issue to Ireland.

- 4) Ireland was in favour of commingling being allowed.
- 5) Ireland is of the opinion that cross border storage is vital. This issue had high salience with Ireland. Thus it should be allowed to store stocks in other Member States.
- 6) Ireland is of the opinion that tickets should be allowed. This issue had high saliency with Ireland.
- 7) Ireland was opposed to the mandatory nature of the obligation that all business pertaining to oil reserve stocks should be run through a central stockholding agency. Ireland has a central stockholding agency. Ireland however chooses, and wants to maintain the right, to keep part of the management of oil reserve stocks outside of the reach of the central agency. This issue had high salience to Ireland.
- 8) Ireland was opposed to weekly reporting. Ireland believed this to be “hugely bureaucratic”(Representative Irish Ministry of Energy 2010).
- 9) No view was expressed on the issue.
- 10) No view was expressed on the issue.

## **Italy**

Italy is an IEA founding member (IEA 2010). The Italians communicated that only one issue had saliency to them, that is: the issue of an obligatory agency to manage oil reserve stocks. Apart from this issue Italy did not enter the negotiation process with any objections to the Commission proposal. The only other Commission proposal Italy eventually took a stance against, was the proposed weekly reporting of oil reserve stocks. All of the 10 positions on the issues are based on the following source: Interview Italian permanent representative, 30.6.2010.

Issues with saliency to Italy were issues: 7 and 8.

- 1) The required minimum number of days of reserves were not an issue to Italy. Italy is of the opinion that 90 days of reserves are adequate.
- 2) Italy is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves.
- 3) Italy is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Italy is of the opinion that commingling should be allowed.
- 5) Italy is of the opinion that it should be allowed to hold stocks on the territory of other member countries.
- 6) Italy is of the opinion that tickets should be allowed.
- 7) Italy did at first see problems with the setting up of an agency to manage oil reserve stocks.
- 8) Italy is of the opinion that oil stocks should not be reported on a weekly basis.
- 9) Italy did not express an opinion on this issue.
- 10) Italy did not express an opinion on this issue.

## **Latvia**

Latvia is not a member of the IEA (IEA 2010).

Latvia negotiated a transition period with regards to the size of the oil reserve. Latvia and a number of other non IEA members cannot comply to holding the 90 days equivalent of oil imports. All of the 10 positions on the issues are based on the following source: Interview Latvian permanent representative, 3.6.2010.

The issues with salience to Latvia were: 1, 5, 6, 7, 8 and 10. All the issues were classified as being of high salience To Latvia, as opposed to being merely of salience. The Latvian representative classified issue 1 as being the most salient among the issues.

- 1) Latvia raised issues concerning the 90 days of reserves. This issue among the issues with high salience has the highest salience to Latvia. 90 Days is seen as far too ambitious a benchmark for Latvia.
- 2) Latvia is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves.
- 3) Latvia is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) Latvia is of the opinion that commingling should be allowed.
- 5) Latvia is of the opinion that it should be allowed to hold stocks on the territory of other member countries. This issue has high salience to Latvia. Again, this is an important issue to Latvia.
- 6) Latvia is of the opinion that tickets should be allowed. This issue has high salience with Latvia
- 7) Latvia is of the opinion that an oil stock agency should not be obligatory. This is an issue of high saliency to Latvia.
- 8) Latvia is of the opinion that oil stocks should not be reported on a weekly basis. This is an issue of high salience to Latvia.
- 9) Latvia did not express a viewpoint on this issue
- 10) The issue of energy security has high salience to Latvia.

## **Lithuania**

Lithuania is not an IEA member(IEA 2010).

Lithuania did not comment on its standpoints on the Oil Stock Directive.

## **Luxembourg**

Luxembourg is an IEA founder member (IEA 2010). Luxembourg took a vocal stance in the EU Council proceedings. Clearly communicating that a number of the proposals were unacceptable to Luxembourg. As one of the smallest Member States, Luxembourg finds itself in a difficult position as far as the issue of storage of oil reserve is concerned. Again, it is interesting to note how in the case of Luxembourg shows how the proposed directive, in the form preferred by the Commission. Would have created the paradox that a complying IEA member, which Luxembourg is, would be in breach of a set of provisions from a EU directive, which the Commission says is designed to converge EU oil stock holding practices with the IEA regime and oil stock holding practice. All of the 10 positions on the issues are based on the following source: Interview Luxembourg Negotiator, 4.7. 2010.

The issues: 5 and 6 had utmost saliency to Luxembourg.

The standpoint of Luxembourg is that 90 days of reserves are adequate.

- 1) Luxembourg is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves.
- 2) Luxembourg is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 3) Luxembourg is of the opinion that commingling should be allowed.
- 4) Luxembourg is of the opinion that it should be allowed for a member state to hold stocks on the territory of other member countries. This point had overriding salience over all other issues for Luxembourg. A point of the utmost salience to Luxembourg.
- 5) Luxembourg is of the opinion that tickets should be allowed. This has a high degree of salience to Luxembourg.
- 6) Luxembourg is of the opinion that an oil stock agency should not be obligatory.
- 7) The standpoint of Luxembourg is that oil stocks should not be reported on a weekly basis.
- 8) Luxembourg did not express an opinion on this issue.
- 9) Luxembourg did not express an opinion on this issue.

### **Malta**

Malta is not an IEA member (IEA 2010).

Malta did not agree to disclosure of its positions on the issues as, negotiated in the EU Council.

### **Netherlands**

The Netherlands is an IEA founder member (IEA 2010). The Netherlands was one of the most vocal opponents to the EU Commission its proposals during the EU Council negotiations (Interview representative EU Council Energy Policies Unit, 7.7.2010). The Netherlands provided much of the intellectual impetus for the opposition to the Commission proposals through its thoroughly prepared texts (Interview representative EU Council Energy Policies Unit, 7.7.2010). Perhaps it was pride in this fact that made the Dutch Ministry of Economic Affairs later take the unusual step of publishing its initial position paper on the website of the Ministry of Economic Affairs – These were the Dutch positions taken to the negotiation in the EU Council. This unambiguously communicated the Netherlands its opposition to the EU Commission proposals from the start.

Moreover the Netherlands felt certain of the merits of the positions taken in its initial position paper. So much so that it had its objection stated for the record on those issues - such as more oversight (Dutch EU Council Position Paper 2008, p.5) - on which it did not carry the day. Thus the documents attached to the final unanimous Council vote states that the Netherlands is disappointed in the level of oversight agreed in the new directive.

The Dutch initial position paper on the proposed new directive was released to the council on the 17th of June 2008. In effect it is a mission statement to alter the Commission proposal on every issue, though coaxed in polite, diplomatic language. It seriously questions the logic of the EU Commission proposals (Dutch EU Council Position Paper 2008).

The Netherlands did not succeed in getting all of its views into the final directive. The Netherlands did succeed in stopping all those proposals that it saw as constituting a clear red line. All of the following 10 Dutch positions on the issues are based on the source of the Dutch EU Council Position Paper as published 17 June 2008 by the Dutch Ministry of Economic Affairs, titled: “Dutch position paper on the EU Consultation document on the revision of the emergency oil stocks regime in the EU”. Where a specific point is made of the Dutch reasons for a stance, the page number

The Netherlands is the only country that communicated its initial position in the EU Council on the 10 issues by publishing its position paper, it made a point of doing so. Since this document is available on the website of the Dutch Ministry of Economic Affairs. Thus it is possible to refer to the exact page in this document where the Dutch initial position on any given issue is taken. For the sake of precision

each issue has the page number where the Dutch initial position can be found stated as its source.

The issues: 1, 2, 3, 4, 5, 6, 7 and 8 all had salience to the Netherlands.

- 1) The Netherlands is in favour of a minimum of 90 days of oil reserve stocks, but doubts whether this requirement by itself guarantees sufficient stocks in case of an emergency. The Netherlands identifies the following about the 90-day oil stock holding obligation in the new proposal: “At first glance, the Commission’s proposal seems to approximate the IEA method, but in fact the proposal entails a new, rebuilt EU system by introducing several safeguards and conditions, leading to a calculation method potentially more complicated than the current situation” (Dutch Ministry of Economic Affairs, Agriculture and Innovation 2008, p.2.). This sentiment is reiterated by the Danish representation in 2010 (Interview Danish permanent representative 4.6.2010). The Netherlands position is that the very finely tuned oil stock holding requirements will prove too costly to administer (Dutch Ministry of Economic Affairs, Agriculture and Innovation 2008, p.2.). The current system is too complex and bureaucratic to start with, and that it is also too costly (Dutch Ministry of Economic Affairs, Agriculture and Innovation 2008, p.2). This point carried salience with the Netherlands to such a degree that the Netherlands had its position stated for the record.
- 2) The Netherlands is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves. The Netherlands supports this. But rejects coupling stock levels to internal consumption. Which would require more stocks to be held in these countries the form of specific oil products (Dutch Ministry of Economic Affairs, Agriculture and Innovation 2008, p.2).
- 3) The Netherlands is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) The Netherlands is of the opinion that commingling should be allowed. The NL its experience with successful commingling of government held stocks held through the COVA agency (85% of all stocks) with stocks held by companies are the foundation for this position (Dutch Ministry of Economic Affairs, Agriculture and Innovation 2008, p.2).
- 5) The Netherlands is of the opinion that it should be allowed for a member state to hold stocks on the territory of other member countries. An issue with high salience to the Netherlands.
- 6) The Netherlands is of the opinion that tickets should be allowed. This issue has very high salience for the Netherlands. A further point to be noted is that of the stocks held by COVA<sup>20</sup> a large part are in the form of tickets (Dutch Ministry of Economic Affairs, Agriculture and Innovation, p.2).
- 7) The Netherlands is of the opinion that an oil stock agency should not be obligatory. This point had salience with the Netherlands.
- 8) The Netherlands is of the opinion that oil stocks should not be reported on a weekly basis. The Dutch government sees a system of analysing stocks by utilizing the data given for reasons of tax accounting as more accurate. Than a system of weekly questionnaires in which industry give account of their actual, physical, stocks (Dutch Ministry of Economic Affairs, Agriculture and Innovation 2008, p.6).
- 9) The Netherlands did not express an opinion on this issue.
- 10) The Netherlands did not express an opinion on this issue.

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<sup>20</sup> COVA, “The Netherlands National Petroleum Stockpiling Agency (COVA). The Netherlands Petroleum Stockpiling Agency (COVA) is the independent national organization which is responsible for the strategic oil stocks of the Netherlands. The aim of COVA is to fulfill, on behalf and by mandate of the Minister of Economic Affairs, the purchase, sale and storage of crude oil and oil products based on the requirements set by the International Energy Agency (IEA) and the European Union (EU). COVA's function is to maintain the quantities of compulsory stocks imposed under prevailing legislation, both as crude and products, at the lowest possible cost. COVA is a non profit foundation”(COVA 7 July 2010).  
<http://www.cova.nl/index.php?lang=EN&PHPSESSID=47317ae1a894ac5c64076be43959f48c>.



## **Poland**

Poland is an IEA member, and has been since 2008(IEA 2010). Poland did not comment on the negotiations in the Council. Neither did other Member States representatives recall a vocal Polish stance on any of issues.

## **Portugal**

Portugal has been an IEA member since 1981(IEA 2010). Portugal did not communicate salience on any issue except for issue number 8, the weekly reporting. All of the 10 positions on the issues are based on the following source: Questionnaire Portuguese permanent representative, 29.7. 2010.

Issue number: 8 had salience to Portugal.

- 1) The position of Portugal is that the minimum oil stock reserve should be 90 days.
- 2) The position of Portugal is that local production should count as an equivalent replacement for oil stocks.
- 3) Portugal is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) The position of Portugal is that commingling should be allowed.
- 5) The position of Portugal is that it should be allowed to hold stocks across borders.
- 6) The position of Portugal is that tickets should be allowed. However, Portugal prefers not to make use of tickets itself. This was not an issue of high salience to Portugal.
- 7) The position of Portugal is that an agency should be allowed.
- 8) The position of Portugal is that there should be no weekly reporting of oil stocks.
- 9) The position of Portugal is that this is a positive option, which has to be worked out further.
- 10) Portugal did not have a position on this issue.

## **Romania**

Romania is not an IEA member state (IEA 2010). The appropriate Romanian officials declined to comment on Romania's stance on the issues in the negotiation process. When asked for the Romanian standpoint the Romanian permanent representation consulted the responsible government officials in Bucharest several times. The Romanian government bureaucracies declined to comment on the standpoint of Romania on the issues in the negotiation process in the Oil Stock Directive.

## **Slovakia**

Slovakia joined the IEA in 2007(IEA 2010). Slovakia does comply to the IEA regime, and among the new Member States, it was one of the few countries that communicated that it would not need a transition period to comply with the 90 days minimum of oil stock reserves. The issue was deemed important though to Slovakia, and is regarded as an issue of salience. All of the 10 positions on the issues are based on the following source: Interview Slovakian Negotiator Oil Stock Directive, 22.7. 2010.

The salient issues to Slovakia were issues: 1, 4, 6, 8, 9 and 10. With issue 1 having high salience for the Slovak Republic.

- 1) The Slovak position on the minimum number of days of oil reserve was that this should be 90 days of average internal consumption. The issue has high salience for the Slovak Republic.
- 2) The Slovak Republic did not express a view on indigenous oil production, apart from that its own internal production is negligible, and it has no vested interest either way on the issue
- 3) The Slovak Republic is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.
- 4) The Slovak Republic was in favour of commingling. In practice commingling is only used in the case of the reserve held in crude oil. In the case of oil products such as kerosene the Slovak Republic holds its stocks in separate facilities. In the case of “oil products are stored in facilities dedicated solely for this purpose separately from commercial stocks of industrial subjects, which allows constant control of emergency stocks”(Slovak Negotiator Oil Stock Directive 2010).
- 5) The Slovak Republic was of the opinion that oil stocks should be allowed to be held across borders.
- 6) The Slovak Republic was in favour of an agency.
- 7) The Slovak republic did not take a stance on the ticket system.
- 8) The Slovak Republic was opposed to weekly reporting
- 9) The Slovak Republic endorses the European Parliament its standpoint that more effort and investment is needed to diversify the EU its energy sources. ”To cooperate with the countries in the North Sea region in view of their significant potential as energy sources” (Slovak Negotiator Oil Stock Directive 2010).
- 10) On the proposal by the European parliament for an external dimension to EU energy policy the Slovak republic is of the opinion that ””The safeguarding of the energy supply are essential elements of public security for Member States” (Slovak Negotiator Oil Stock Directive 2010). “Energy security should be a priority on the agenda for the next EU-Russia summit and become an integral part of the new EU-Russia agreement(Slovak Negotiator 2010). An issue of high salience.

## **Slovenia**

Slovenia identified the ban on cross border storage as a clear ‘red line’(Slovenian representative EU council, 2010). Slovenia does not have the storage capacity within its borders to maintain a 90 day oil stock reserve, yet it does manage to maintain a 90 day oil reserve under the IEA guidelines. Clearly showing that there are dichotomies between the provisions of the proposed EU Oil Stock Directive and the IEA oil stock regime have

The Slovenian position thus provides an interesting case in point on the contradiction of the Commission proposal with its purported aim. The Commission proposal was allegedly solely designed to integrate EU oil stock holding practices with those of the IEA. The particular case of Slovenia shows that in this it fundamentally fails already in its design phase. All of the 10 positions on the issues are based on the following source: Interview Slovenian permanent representative, 2.7. 2010.

The Salient issues to Slovenia were issues: 4, 5, 6, 7 and 8. With issues 4, 6, and 7 being regarded as of high salience to Slovenia.

- 1) The Slovenian position on the minimum number of days of oil reserve was that 90 days of average internal consumption was not an issue.
- 2) Slovenia did not express a view on indigenous oil production, apart from that its own internal production is negligible, and it has no vested interest either way on the issue
- 3) Slovenia is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks.

- 4) Slovenia was of the opinion that oil stocks should be allowed to be held across borders. This issue was of a high saliency to Slovenia.
- 5) Slovenia was in favour of commingling.
- 6) Slovenia was for the ticket system. This issue had high saliency to Slovenia.
- 7) Slovenia was against the proposed the exclusive and obligatory nature of a stockholding agency. Slovenia had an issue with what the agency was entitled to agree upon. This was a salient issue
- 8) Slovenia was opposed to weekly reporting
- 9) No view was expressed.
- 10) No view was expressed.

## **Spain**

Spain is a founding member of the IEA(IEA 2010).

Spain did not react to the queries, and it was thus not possible to find out its standpoints in the negotiation process.

## **Sweden**

Sweden is a founding member of the IEA(IEA 2010). The directive was very salient to Sweden because of its vested interest in the status quo. Sweden wants to maintain the Swedish system whereby industry holds and operates all the oil stocks. This puts Sweden considers this system to be the most cost effective system. The Swedish system can be considered market oriented: Industry holds all stocks, there is no agency control of stocks. Though there is an energy agency, this agency is not solely dedicated to oil stocks. Its main task is oversight (Swedish Ministry of Energy 2010). Stocks earmarked as reserve stocks can be fully commingled with commercial stocks used for industrial processes.

Of all the systems in the EU, the Swedish system is one of the systems most unlike the sort of provisions the Commission proposed, and which the Commission maintains would ensure convergence with the IEA. Despite this contradiction Sweden does fully comply with IEA standards. Sweden did not express views on security of supply issues<sup>21</sup>. All of the 10 positions on the issues are based on the following source: Interview Swedish Negotiator, 10.9. 2010.

The salient issues to Sweden were issues: 3,4,5,6,7 and 8.

- 1) Sweden its position on the minimum number of days of oil reserve was that 90 days of average internal consumption was not an issue.
- 2) Sweden did not express a view on indigenous oil production, apart from that its own internal production is negligible, and it has no vested interest either way on the issue

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<sup>21</sup> It is however important to note that Sweden is well ahead of most other EU Member States in this policy area. This particular issue is thus perhaps relatively less pressing for Sweden than for other EU members, when seen in a EU context of course. Sweden has is advancing its own policies to wean itself of oil, through its own efforts by 2020(Swedish Ministry of Energy, 2006, p.4). In fact “Electricity production in Sweden is basically fossil-free. Approximately half of the electricity production comes from hydropower and the remainder is provided by nuclear power. Despite rising industrial output, the use of oil has fallen from more than 70 % of the total energy supply in 1970 to around 30 % today. This is mainly due to diversification of fuels and more efficient use of energy” (Swedish Ministry of Energy 2010). This having been said, also in Sweden it is still the case that 97% of transport relies on oil (Swedish Ministry of Energy, *making Sweden an oil free society*, Commission on oil independence, 21 June 2006, p.10).

<http://www.sweden.gov.se/content/1/c6/06/70/96/7f04f437.pdf>

- 3) Sweden is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks. This issue was salient to Sweden.
- 4) Sweden is in favour of commingling. In Sweden all oil reserve stocks are commingled with regular industry stocks. This was the most salient issue to Sweden.
- 5) Sweden was of the opinion that oil stocks should be allowed to be held across borders. This issue was salient to Sweden.
- 6) Sweden is for the ticket system. This issue was of saliency to Sweden.
- 7) Sweden was against the obligatory nature of a stockholding agency. Sweden does have an agency, but it mostly has a function of oversight, like a supervisor. Stocks are not held, nor managed by the agency. This was a point of high salience to Sweden.
- 8) Sweden was opposed to weekly reporting
- 9) No view was expressed.
- 10) No view was expressed.

### **United Kingdom**

The UK identified a number of issues to whom it attached high saliency. One with high saliency was the issue of domestic oil production serving as an equivalent to oil reserve stocks held in oil storage facilities. In the British mind this was inextricably linked with calculation methods.

“The UK position as a North Sea oil producer is unique, and had to be acknowledged” (UK permanent representative to the EU council 2010). The UK uses a system where industry is required to hold reserve stocks on its own account (UK permanent representative to the EU council 2010).

There is not an agency system in place. The UK strongly opposed the idea of an obligatory CSE, or stockholding agency. “The Energy Council has removed from the draft directive the requirement for compulsory central stocking entity. According to the minister, this has been a key UK negotiation objective and allows the UK to retain the flexibility to design and operate an emergency stocking regime best suited to our national conditions”(The European Journal 2009). All of the 10 positions on the issues are based on the following source: Interview UK permanent representative, 28.6. 2010.

The salient issues to the UK were issues: 2,3,4,6,7,and 8. The issue of overriding salience to the UK was issue 2: allowing indigenous production to count as part of the reserve. Issue 2 was a clear red line for the UK government. Thus issues: 2, 3, 6 and 8 were of high salience.

- 1) The UK did not object to the proposed 90 days of oil reserve, but it did raise objections regarding the calculation method of these 90 days of reserves.
- 2) The UK is of the opinion that indigenous oil production should be allowed to be a replacement for oil stock reserves. This issue has very high salience to the UK, because the UK is still a relatively large oil producer.
- 3) The UK is of the opinion that oil stocks that are operated and managed by commercial operators should be allowed to count as part of the oil reserve stocks. This is an issue of high salience to the UK.
- 4) The UK is of the opinion that commingling should be allowed.
- 5) The UK is of the opinion that it should be allowed to hold stocks on the territory of other member countries.
- 6) The UK is of the opinion that tickets should be allowed. This issue has high salience with the UK.
- 7) The UK is of the opinion that an oil stock agency should not be obligatory.
- 8) The UK is of the opinion that oil stocks should not be reported on a weekly basis. This is an issue of high salience to the UK.
- 9) The UK did not express a viewpoint on this issue
- 10) The UK did not express a viewpoint on this issue.

## 5.6 The final directive and EU Council position

The EU Council is the last institutional actor whose approval is needed to enact a directive. When the EU Council reached its final – unanimous - agreement on the 15<sup>th</sup> of June 2009 this enacted Oil Stock Directive 119/2009/EC in all its provisions as having the force of law as from 14 September 2009. The final directive is thus in its articles a carbon copy of the EU Council agreement. This is an automatic result of the design of the EU legislative process. Knowing this it would be superfluous to analyse the content of the final directive separately from the final EU Council position. Because of this the final EU Council position and the final directive are showed combined here in one table – see Table 4 here directly below.

This shows why to answer the research question in a meaningful way it is not sufficient to only analyse the final position of the EU Council, as shown here above in table 4. A comparison between the Member States their initial standpoints on the issues during the negotiation procedure is necessary. This is done in section 5.6.1. The inclusion of the Member States positions allows for a more meaningful comparison of the final position of the EU Council on the directive with that of the EU Parliament and the EU Commission, on their positions – as is done in section 5.9. This will show to what degree the EU Council adopted or rejected the EU Commission and EU Parliament its proposals.

Table 4 Final Oil Stock Directive and EU Council position

Positions Directive 119/2009/EC	<b>THE FINAL OIL STOCK DIRECTIVE as agreed upon by the EU Council in unanimous agreement and subsequently enacted unchanged *</b>
	Council
1. Must the minimum oil reserve correspond to 90 days of net oil imports, or 70 days of inland consumption, whichever of the two quantities is greater. Or another figure?	90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.
2. Should indigenous oil production be allowed to count as an equivalent replacement for stocked oil reserve stocks?	Yes
3. Should oil reserve stocks that are operated and managed by commercial operators be allowed to count as part of the oil reserve stocks?	Yes
4. Should it be allowed for oil reserve stocks to be physically stored with normal operating stocks held by industry? (so called commingling of stocks)	Yes
5. Should it be allowed for oil reserves to be held outside of the member state its borders on which the obligation falls?	Yes
6. Should options in the form of tickets be allowed to count as part of oil reserve stocks?	Yes
7. Should a central stockholding agency be obligatory in Member States for the control, sale, acquisition, and management of all oil reserve stocks?	No
8. Should commercial operators report their reserves on a weekly basis? (To the EU Commission)	No
9. Should measures be taken to ensure long term security of supply by creating a favourable climate for industry to prospect, and develop, new oil fields?	No
10. Should security of energy supply be linked with a EU foreign policy towards the EU its neighbour countries?	No

\* Unanimously agreed upon by the Council on 15 June 2009, enacted as directive on 14 September 2009.

### 5.6.1 The quantitative analysis of the Member States' position in the EU Council

In this section we compare the positions taken by the EU Council Member States during the negotiation phase. This is necessary because a comparison that only compares the final standpoints of the EU Parliament, the EU Commission and the EU Council is an incomplete method of comparison for drawing conclusions on the negotiation process and the relative power of the actors.

As Golub has shown, the winners and losers on the issues among the Member States are decided by how many of a particular member state its standpoints ended up in the outcome of the final Oil Stock Directive. Next to establishing the quantitative winners and losers among the Member States on the issues, the overall number of Member States that voted on a particular issue is also weighed quantitatively. With the most voted on issues to be considered to have been the most salient. For reference, the final EU Council position reached is shown in the previous section at the beginning of the chapter in table 4. This is a unanimous position negotiated out of the divergent positions of the 27 Member States. These negotiations took place in the working group and at the Coreper level. Tables 6 and 7 show which countries prevailed on the issues in the negotiation process. Showing the winners and losers among the Member States. The fact that the negotiations took place within the working group and at the Coreper level will also allow reflection on the NF assumption: that policy elites and technocrats are imbued with the mission statement of the supra-governmental organisation they work for.

*Table 5 The quantitative list of the Member States' positions on the issues in alphabetical order*

EU Council Member State	Number of issues on which the stance taken by a member state was accepted into the unanimous final EU Council position	Number of issues on which the stance taken by the member state did not make it into the unanimous final EU Council position
Austria	5	2
Belgium	--	--
Bulgaria	7	3
Cyprus	7	1
Czech Republic	6	2
Denmark	7	1
Estonia	--	--
France	1	6
Finland	9	1
Germany	8	1
Greece	6	1
Hungary	5	5
Ireland	8	0
Italy	8	0
Latvia	8	1
Lithuania	--	--
Luxembourg	8	0
Malta	--	--
Netherlands	8	0
Poland	--	--
Portugal	7	1
Romania	--	--
Slovakia	6	3
Slovenia	5	2
Spain	--	--
Sweden	7	0
UK	5	3

--The position taken by the country in question could not be found

The analysis of the positions of the individual Member States reveals real differences among the countries in the EU Council. There clearly emerges from the negotiations a group of ‘winners’, consisting of: The Netherlands, Finland, Ireland, Germany, Luxembourg, Latvia and Sweden. These countries saw most of their standpoints adopted as part of the final outcome of the Oil Stock Directive. Italy seems to have acted for expediency’s sake, since none of the issues had great salience to it (See Italy in section 5.5).

Permanent representatives stuck to their country’s positions, defending their perceived national interests. In the case of the Netherlands this was made all the clearer by its open communication of its official initial Council position on all the issues. The comparison in table 6 shows that it were a number of highly advanced EU Member States from the West of the EU, together with the Scandinavian Member States, that lead the opposition to most of the EU Commission its proposals. Table 6 allows the deduction to be made that the ‘Nay-Sayers’ carried the day. This does not immediately say anything about the veto power of the smaller Member States, since the opponents of the Commission standpoints were sure of having the majority through the QMV.

It also would seem to make clear what the price of the brokered unanimous consensus is: agreement on the lowest common denominator, along the lines of the predictions by Golub. Studying the table makes it obvious that very few countries that were opposed to seeing a measure accepted had to concede defeat by seeing that measure enacted in the outcome of the final directive.

*Table 6 The quantitative winners and losers on the issues among the Member States*

EU Council Member State Listed high to low by the number of standpoints successfully negotiated into the final EU Council directive minus the number of issues on which a country was defeated	Number of issues on which the stance taken by a member state was accepted into the unanimous final EU Council position	Number of issues on which the stance taken by the member state did not make it into the unanimous final EU Council position
Finland	9	1
Ireland	8	0
Italy	8	0
Luxembourg	8	0
Netherlands	8	0
Germany	8	1
Latvia	8	1
Sweden	7	0
Cyprus	7	1
Denmark	7	1
Portugal	7	1
Bulgaria	7	3
Greece	6	1
Czech Republic	6	2
Slovakia	6	3
Austria	5	2
Slovenia	5	2
UK	5	3
Hungary	5	5
France	1	6

The unanimous position of the EU Council shows that countries agreed on the lowest common denominator theory of Golub about EU Council, and as a consequence: EU politics. only where there was no opposition to new legislation was new legislation – the issues - passed. The EU Council its – unanimous – common position reflects the status quo, as far as the issues are concerned.

No country ended up voting for an article where they were left feeling that one of their red lines – red lines understood as challenging the status quo, finding itself faced by the pro active policy entrepreneurialism of the EU Commission - on the issues as communicated by saliency and opposition was crossed, at least not to such a point that they could not vote with the majority standpoint. This immediately shows how important the weighing of the votes is (EU Council 2010). Since countries

faced with a majority will relent, since it goes against the mores of the EU Council to not vote with the majority, even though QMV would still allow the directive to be enacted with a normal majority.

This becomes clear through the voting behaviour of a number of the new Member States, for whom the directive was too ambitious for their national capabilities (See answers new Member States section 5.5). This notwithstanding they did not choose to voice strong opposition – thus it is hard to state that one of their red lines was crossed as such. This having been said many of the newer Member States could only be made to agree to the directive, if they got extra time to adapt their national oil stock holding policies and practices, and capabilities. The newer Member States were very anxious about being forced to comply with the more ambitious versions of the directive, as proposed by the EU Commission. More suited for the Member States whom were already IEA members.

The other side of this argument is that a handful of Member States did not get what they wanted in the final outcome of the directive. France was a clear loser, since it had committed itself to the EU Commission version of the Oil Stock Directive. Which was more ambitious and rigorous in its oil stock holding provisions. France supported the EU Commission its conception of the directive on almost every issue (Interview Representative EU Council Energy Policy Unit 7.7.2010).

The Netherlands was one of the most vocal countries in the EU Council negotiations that was strongly opposed, championing the intellectual opposition to the EU Commission its proposals (Interview Representative EU Council Energy Policies Unit 7.7.2010). In this sense the Netherlands was one of the key players in the EU Council negotiations, and to an extent: the opposite number of France in the debate about oil stock holding during the negotiations. When the Netherlands on the other hand did instead of opposing a measure support a measure - The Netherlands sought stronger oversight (EU Council, 2009, p.3) – it failed to get it supported by the rest of the Council (Interview representative EU Council Energy Policies Unit 7.7.2010). The Netherlands felt so strongly about this that it had it be stated for the record, in the EU communiqué announcing the ‘unanimous’ approval of the directive (EU Council, 2009, p.3).

Weighing of the issues. As said it is possible to distinguish, in a relative sense, the issues with the most and the least salience to the EU Council as a whole. The comparison rests on weighing the issues by the number of countries that expressed a position on them. That this is possible is only because not every country expressed a position on all of the ten issues. Furthermore the issues on which no opinion was expressed differed from country to country. Finally it is interesting to note that only a few countries expressed a position on each of the ten issues.

A hierarchical table weighing the issues is made based on this mode of comparison. The issues on which the highest number of Member States expressed an opinion in the EU Council can be relatively considered to be the most salient to the Member States and thus to the EU Council as a whole. Among a number of issues there can be no relative hierarchical relation discovered because Member States expressed their opinions on them in equal measure. The following picture emerges whereby issues 1, 3 and 4 rank just below issue 8 as being the most salient to the greatest number of Member States. Followed downward by issue 5, 6 and 7, with a lower degree of salience. Surprisingly issue 2 - an issue key issue with regards to the accounting of the size of the oil reserve - is through this method of comparison exposed as having a surprisingly low degree of salience to the EU Council. Finally issues 10 and 9, in that order, have a very low saliency among the Member States in the EU.

The voting behaviour of the Member States in the EU Council exposes the relative lack of power and influence of the EU Parliament. Issues 9 and 10 were proposed by the EU Parliament, and were important enough for a number of Member States to include in the discussions in the EU Council. This having been said, the weighing of the Member States’ interest in the issues shows that only 6 and 8 Member States expressed a clear opinion on issues 9 and 10 respectively. In other words, the proposals by the EU Parliament were not taken all that seriously, and did not develop into a much-discussed topic in the EU Council. It is interesting to contrast this with the proposals by the EU Commission. These formed the heart of the debate in the EU Council. This would suggest that the EU Council has more decision making power than the EP, but the EU Council has in turn more decision making power than the EU Commission



Table 7 Issues weighed by greatest number of position by Member States

Issue	Issues ordered hierarchically by relative salience	Number of Member States expressing a clear opinion on the issue in the EU Council
Issue 8	<i>Relative position of salience among the issues: 1.</i> Should commercial operators report their reserves on a weekly basis? (To the EU Commission)	21
Issue 1	<i>Relative position of salience among the issues: 2.</i> Must the minimum oil reserve correspond to 90*** days of net oil imports, or 70 days of inland consumption*, whichever of the two quantities is greater	20
Issue 3	<i>Relative position of salience among the issues: 2.</i> Should oil reserve stocks that are operated and managed by commercial operators be allowed to count as part of the oil reserve stocks?	20
Issue 4	<i>Relative position of salience among the issues: 2.</i> Should it be allowed for oil reserve stocks to be physically stored with normal operating stocks held by industry? (So called commingling of stocks)	20
Issue 5	<i>Relative position of salience among the issues: 3.</i> Should it be allowed for oil reserves to be held outside of the member state its borders on which the obligation falls?	19
Issue 6	<i>Relative position of salience among the issues: 4.</i> Should options in the form of tickets be allowed to count as part of oil reserve stocks?	18
Issue 7	<i>Relative position of salience among the issues: 4.</i> Should a central stockholding agency** be obligatory in Member States for the control, sale, acquisition, and management of all oil reserve stocks?	18
Issue 2	<i>Relative position of salience among the issues: 5.</i> Should indigenous oil production be allowed to count as an equivalent replacement for stocked oil reserve stocks?	16
Issue 10	<i>Relative position of salience among the issues: 6.</i> Should security of energy supply be linked with a EU foreign policy towards the EU its neighbour countries?	8
Issue 9	<i>Relative position of salience among the issues: 7.</i> Should measures be taken to ensure long term security of supply by creating a favourable climate for industry to prospect, and develop, new oil fields?	6

Understood through LI it becomes clear that the EU Commission acts on behalf of the EU Council also, but that the EU Council then in this case study sees fit to amend and change every single issue of a directive that they required the Commission to propose. LI thus sees the EU Council involved not only at the final stages of the directive, but also at the draft stages.

The degree to which the EU Council is subsequently prepared to alter each and every issue shows a sovereignty of will on the part of the EU Council. A sovereignty of will that the EU Commission does in this case study at least not match, for it would have had to threaten to withdraw its proposed legislation. From the research at least it did not become clear that the Commission seriously considered this option (Interview EU Commission representative 12.8.201

## 5.7 Conclusion Research Findings

The core of this research revolves around the question which EU institution has the most decision-making power. Just as Golub did in his research this is tested by appraising whether it were the standpoints by the EU Commission and the EP or those of the EU Council that are closest to the outcome of the final Oil Stock Directive on the issues. Having been able to uncover the positions of all 3 institutional actors on the issues during the legislative process.

Using the method developed by Golub of comparing which of the institutional actors was able to prevail on the issues against the will of the other institutional actors the most times. It is possible to answer the central research question: "What is the direct influence of the EU Council in EU legislative decision making in the case of the EU crude oil reserve directive, in relation to the decision making role played by the EU Commission and the EU Parliament?" This quantitative method of comparison can be understood as a zero sum game. Meaning that there is always a loser and a winner. This allows us to clearly show which actor influenced one of the dependent variables to the greatest degree, taking the ambiguity of lesser degrees of influence on the final outcome of the directive out of the equation. As Golub has shown, the best way to compare the variables in a case study with each other is to pit the independent variables against each other in a comparison of their power to shape the final outcome of the issues. This means comparing the Commission, Parliament and Council their standpoints as diametrically opposed variables with regards to the final outcome of the directive, the final outcome of this contest will reveal whom has the most power to shape the issues into final outcomes. The challenge inherent in comparing three political actors through this method is that though there always will be a winner. There exists the possibility that two of the actors might agree on an issue an equal number of times, with only one disagreeing. This could produce a picture where two institutional actors seem to both prevail on an issue.

However, as the number of variables in a quantitative comparison increases, the more likely it is that one actor will emerge as the clear winner. For reasons of comparison the positions by the institutional actors are recapitulated one more time, represented in full in table 8.

Table 8 Positions of the institutional actors compared to final directive

Positions Directive 119/2009/EC	13 November 2008	22 April 2009	15 June 2009	14 September 2009
Actors	Commission	EP	Council	Final Directive 119/2009/EC
1. Must the minimum oil reserve correspond to 90*** days of net oil imports, or 70 days of inland consumption*, whichever of the two quantities is greater.	90 days of average net oil imports, or 70 days of inland consumption whichever of the two quantities is greater.	90 days of average net oil imports, or 70 days of inland consumption whichever of the two quantities is greater.	90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.	90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.
2. Should indigenous oil production be allowed to count as an equivalent replacement for stocked oil reserve stocks?	No	No	Yes	Yes
3. Should oil reserve stocks that are operated and managed by commercial operators be allowed to count as part of the oil reserve stocks?	No	No	Yes	Yes

4. Should it be allowed for oil reserve stocks to be physically stored with normal operating stocks held by industry? (So called commingling of stocks)	No	Yes	Yes	Yes
5. Should it be allowed for oil reserves to be held outside of the member state its borders on which the obligation falls?	No	Yes	Yes	Yes
6. Should options in the form of tickets be allowed to count as part of oil reserve stocks?	No	No	Yes	Yes
7. Should a central stockholding agency** be obligatory in Member States for the control, sale, acquisition, and management of all oil reserve stocks?	Yes	Yes	No	No
8. Should commercial operators report their reserves on a weekly basis? (To the EU Commission)	Yes	No	No	No
9. Should measures be taken to ensure long term security of supply by creating a favourable climate for industry to prospect, and develop, new oil fields?	No	Yes	No	No
10. Should security of energy supply be linked with a EU foreign policy towards the EU its neighbour countries?	No	Yes	No	No

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Table 9. Shows the number of times that one of the institutional actors prevailed on an issue.

*Table 9 Quantitative comparison of the winners and losers in the negotiation process*

Positions Directive 119/2009/EC	Number of times the institutional actor was able to prevail on an issue and have its concept fully approved	Number of times an institutional actor was defeated on an issue, or was forced to discard part of its position
EU Commission	1	9
EU Parliament	3	7
EU Council	10	0

When we compare the final Oil Stock Directive with the standpoints taken on the 10 issues by the EU Commission, the EU Parliament and the EU Council. We see that the EU Council prevailed on all points over the other institutional actors' conceptions on the issues for the new Oil Stock Directive. The only reservation that can be made against this mode of reasoning is that on the first issue the EU Commission basically got what it wanted: 90 days of oil stock reserve. The EU Council only got the Commission to agree to a small concession: 9 less days of reserves when measured in inland consumption, and only when inland consumption exceeds net imports. Judging from the country standpoints: a concession to the oil producing countries. Nevertheless, the EU Council did get the Commission to concede part of its proposal. We thus can conclude that the EU Council swept the board. This enabled us to answer the central research question of the thesis.

In the case of the strategic oil stock reserve directive it is clear that the EU Council has been shown to have the most decision making power when operating under the consultation procedure. This because the EU Commission, despite its role as a policy entrepreneur, was unable to get its way on more than 1 issue out of 10. Along the lines of the reasoning of Golub this makes the Commission weaker, and the EU Council strong.

## 6. Conclusion

Given the structure of the decision making process in the EU under the consultation procedure, it is not altogether surprising that the EU Council got its way on many of the issues. The fact that the EU Council got its way on most, if not all, of the issues does show that the EU Council has a lot of decision-making power to be sure. Therefore it is not superfluous to reflect on this. For chapter 5 has not only shown that the EU Council is strong, but section 5.7 shows that the EU Commission is weaker than was to be expected. This was however to be expected under the consultation procedure, whereby the EU Council does not have to contest with the EP, and can make up matters among its Member States. Leaving less room for the EU Commission to influence the policy process through functionalist elements. Thus the consultation procedure seems to simplify the legislative process into the chronology of: The EU Commission proposes, the EU Parliament debates, and the EU Council finally decides the outcome of the final directive.

In that sense the analysis and the conclusions drawn from the research do not support any major conclusions on the theories of LI, NF and MLG, as such. Nor is the power of the EU Council surprising, as Golub his research has shown.

To say something meaningful about the relative measure of power of the EU Council in this case study, without stating the obvious, it is necessary to analyse the outcome according the theories of NF, MLG and LI.

First of all the voting behaviour of the Member States as analysed in chapter 5.6 exposes the relative lack of influence - next to the expected lack of power under the consultation procedure - of the EU Parliament. Next to this it is interesting to consider the data from chapter 5 on the voting behaviour of Member States on the issues (See section 5.6). Every issue proposed by the EU Commission was heavily voted on. This means that every issue proposed by the EU Commission was taken seriously. This would strengthen NF its argument about the Commission being a policy entrepreneur, despite losing the final outcome of the argument, and thus by the criteria of Golub not having decision-making power. It does however cast doubt on the view of LI that the Commission solely supplies supranational policies and legislation that the Member States demand. Since the opposition to the proposals by the EU Commission was strong in the Council, and Member States felt that they had to develop strong arguments to defeat these proposals. In fact, many Member states were quite anxious about some of the proposals, seeing them as not acceptable (See Member States positions based on interview data chapter 5).

On the other hand the Member States in the EU Council have the Oil Stock Directive that they want. In accordance with the LI element of decisional delegation the Commission proposal could be subsequently reshaped by the Member States according their national preferences, into an Oil Directive that they too felt is necessary new legislation (See chapter 5 section 5).

As far as the EP its influence goes. The low voting tally on the EP its amendments by the EU Council members does not show EP influence as such. This could solely be caused by the use of the Consultation procedure. It is likely that the EP its role will be much more pronounced under the co-decision method.

Nevertheless tested by this case study it can be said that, MLG and NF seem to a greater or lesser degree somewhat brazen in the measure to which they expect the key elements of their theory to influence the outcome of policies. The only overt spillover - or fluidity, to speak with MLG – was that of a MEP turning to the national government of the country of origin for a voting advice on the issues. However, since this lack of NF and MLG influence is very likely due to the variable of the chosen procedure: namely the co-decision procedure. It may still very well be that other case studies show a much larger role for NF and MLG, especially when proposed under the co-decision procedure.

Furthermore the only way for the EU Commission to see any of its original proposals pass through without amendments being made to them, and subsequently passed by the EU Council in amended form, is to withdraw the proposed legislation altogether. Along the logic of NF and MLG the Commission cannot use this option without damaging its role as executive and policy entrepreneur, for it would paralyze the EU. The fact that the Commission does not do this shows that there is a modicum

of merit in the LI viewpoint that there the EU Council and the Member States 'request' the Commission to draft policy and propose legislation. However only if the EU Council has the most decision-making power in other case studies as well can real conclusions be made. Whose merits allow it to be taken seriously, despite the very considerable criticism that this theory has received (Cini, 2003, p.105).

That NF logic has been successfully falsified in the case of the Oil Stock Directive. Does not mean that NF logic did not also account for part of the policy process. Despite the fact that the EU Council voted down key proposals from the EU Commission, and certainly did ignore wholesale those put forward by the EU Parliament. The EU Council too wanted the new Oil Stock Directive along the lines of the IEA design. In this sense each party was satisfied with the end result.

The main teleological reason for a new EU wide Oil Stock Directive was not to tighten the provisions for the established EU Member States, but to ensure that the new EU members in Eastern Europe could guarantee their own energy security. This was especially aimed at those new member countries that are non-IEA members. In this one can say that the Commission succeeded in its teleological objective, since the new Member States agreed to the Oil Stock Directive. More EU integration and convergence of national practices was achieved through the adoption of the Oil Stock Directive. Thus though the EU Council has been shown to have the most decision making power as such, confirming LI, MLG and NF are also confirmed as having elements that are crucial for understanding the functioning of EU institutions. All three theories, MLG, NF and LI are thus valid and important theories for understanding the EU in all its complexity.

## 7. Reflection on Study

When I decided on researching this directive I was aware that since it was a new piece of legislation I could not count on it having been researched by others, or that many sources would be available as such. However the multi-faceted nature of the EU oil reserve directive, and the policy underlying it touch on so many aspects of public administration that a clear research question is very important. Next to being a study into the EU, it also touches on international politics and the neo-Realist tradition. When I started the research I was not yet sure what to expect as far as information gathering was concerned, I knew I was going to have to complement information from documents with data from interviews, not only because this immediately puts one in touch with the reality of government and supranational administration. As well as with the subject you are researching. The objective of this research was to look beyond the official front of things, and look inside the EU its institutions, and find out who is in control of them. A case study seemed the ideal method to link the theoretical with reality. To this end a current piece of legislation was much preferable over an older piece of legislation. Even though the challenges of a piece of legislation that is not well known or researched are legion.

Conducting this case study on the EU Oil Stock Directive has above all other things shown that it is very well possible to engage with EU officials in a fundamental way. Sometimes this took great patience and persistence, as was the case with the German permanent EU representation, where the information gathering process took very long, because it had to be referred forth and back between Berlin and Brussels, but finally in this case also the data was very well documented and very helpful. More than expected though was the openness of communication of EU and national officials. Some very good information was obtained through interviews that were crucial information on the variables.

I come away with a very favourable impression of the people whom work for government in Europe, whether that is for their own country or for the EU and its institutions. They are intelligent people whom are engaging, and they proved that they take transparency seriously.

Though some may have doubted whether it would be possible to acquire detailed information on the Oil Stock Directive, this case study shows that it is possible to acquire invaluable information for scientific research through the use of interviews. Given that the researcher knows what he is looking for, and has the skills for acquiring that information.

The triangulation of the documentation, current affairs sources such as newspapers, together with the interviews, has left me more fascinated by the subject than before. So much so, that I am of the opinion that one could write a very interesting book about it.

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## **Interviewees**

### **Bulgaria**

8.6.2010 Bulgarian permanent representative EU Council

### **Cyprus**

3.6. 2010 Cypriote permanent representative EU Council

### **Czech Republic**

7.7.2010 Czech representative Ministry of Energy: department of oil emergency

### **Denmark**

4.6.2010 Danish permanent representative EU Council

### **EU Commission**

12.8.2010 Representative European Commission DG for Energy Unit Coal & Oil

### **EU Council**

7.7.2010 Representative EU Council Energy Policies Unit, head working group Coreper on the Oil Stock Directive negotiations

### **Finland**

5.7.2010 Finish EU Council Negotiator Oil Stock Directive

### **Greece**

3.6.2010 Representative Greek Ministry of Energy

### **Hungary**

20.8.2010 Hungarian EU Council Negotiator Oil Stock Directive

### **Ireland**

30.7.2010 Irish permanent representative EU Council

10.9.2010 NORA representative, Irish Ministry of Energy

### **Italy**

30.6.2010 Italian permanent representative EU Council

### **Latvia**

3.6.2010 Latvian permanent representative EU Council

### **Luxembourg**

4.7.2010 Luxembourg Negotiator Oil Stock Directive

### **Member European Parliament**

28.6.2010 Luxembourg Member of European Parliament

### **Slovakia**

22.7.2010 Slovakian Negotiator of the Oil Stock Directive

### **Slovenia**

2.7.2010 Slovenian permanent representative EU Council

**Sweden**

10.9.2010 Swedish Negotiator Oil Stock Directive, Swedish Ministry of Enterprise, Energy and Communications

**United Kingdom**

28.6.2010 UK permanent representative EU Council

**Questionnaires****Austria**

23.9.2010 Questionnaire representative BMWFJ

**Germany**

27.7.2010 Questionnaire representative BMWi

**Portugal**

29.7.2010 Questionnaire Portuguese permanent representative EU Council

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