Tough times, shifting roles: examining the EU’s commercial diplomacy in foreign energy markets

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ABSTRACT

Focusing on the strategically important Caspian region, this article demonstrates how commercial energy diplomacy – political support for foreign-investing businesses – is increasingly conducted at the European Union (EU) level. It explains why member states have delegated this role, despite a general hesitancy to co-operate in foreign energy policy and perceptions of a strong division between diplomacy-based and (EU-favoured) governance-based approaches to external energy policy. To explain this new role (and its limits), this article employs a functional–rationalist framework focusing on the structural demands of a more challenging international energy environment and EU-level supply factors (economies of scale, increased leverage and more neutral/less politicized position of the EU) that help respond to it. Overall, the article examines an important area of increasing EU foreign energy co-operation and demonstrates how energy governance and diplomacy are not necessarily competing approaches, but rather different tools for achieving a more secure investment climate for European companies.

KEY WORDS Caspian region; commercial diplomacy; energy diplomacy; energy governance; European Union; Market Power Europe

Introduction

Given their tax contributions and the number of people they employ, the conditions facing major foreign-operating firms are a key concern for governments. In the field of energy, this concern is heightened owing to the key energy supply role that energy companies play (Egenhofer and Legge 2001: 1; European Commission [EC], 2010: 32). States have historically engaged in ‘commercial diplomacy’ as a means to support foreign-investing energy businesses – helping them win deals and protect their business interests once they have invested (Kostecki and Naray 2007). In the European Union (EU), via the Common Commercial Policy (CCP), the Commission has competence over international economic negotiations and, since the Lisbon Treaty,
responsibility for foreign investment agreements (Parello-Plesner and Ortiz de Solóranzo 2013). However, while the EU’s role in economic diplomacy (the negotiation of economic/trade agreements) is well defined within the CCP, its broader role in foreign direct investment (FDI), including business-supporting commercial diplomacy, is not (ibid.: 5).

Given the EU record in energy policy, one might expect a limited role for EU commercial energy diplomacy. Amongst observers of its energy policy, the EU is often considered to be rather ineffective when it comes to diplomacy. Energy policy is an area of mixed competence in the EU and ‘energy diplomacy’ – traditionally a member state prerogative – is often contrasted with a more market-focused governance approach thought to be characteristic of the EU’s (especially Commission’s) preferred methods for advancing energy objectives (Goldthau and Sitter 2015; Youngs 2009). The EU has been described as a ‘liberal actor’ or ‘regulatory state’ in energy policy with the primary task (and tool) of EU external energy policy seen as the promotion of governance frameworks derived, where possible, from the EU’s energy acquis (Goldthau and Sitter 2014, 2015). Energy diplomacy, conversely, is commonly associated with the self-interested foreign policies of states and the politicization of energy (Goldthau 2010: 28; see Herranz-Surrallés 2015: 914–8). Some contend that EU-level efforts to engage in diplomacy or ‘speak with one voice’ are unlikely to be effective because such actions run counter to the economic nature of the EU project and/or are hindered by member state tensions (Finon 2011: 49; Kovačovská 2007; Schmidt-Felzmann 2011).

By contrast, this article demonstrates how the EU now plays a significant role in the area of commercial energy diplomacy. Drawing on a case study of the Caspian region, and Kazakhstan in particular, it shows how the EU has come to both co-ordinate common EU-level commercial diplomatic action and represent EU actors in key commercial diplomatic fora. Such observations, of course, beg a question: why, given member states’ hesitancy to upload foreign energy policy roles to the EU (especially in strategic areas) and the perceived division between energy governance and diplomacy, have member states delegated this specific role in commercial diplomacy to the EU?

To answer this question, this article adopts a rationalist framework focusing on the demands created by an increasingly challenging international system, and EU-level supply of political support functions designed to protect companies in the face of these challenges. It demonstrates how both EU member states and firms have found foreign energy markets increasingly challenging after 2004/5, to the point where member states have struggled to provide effective protection for businesses. In response, EU-level action has offered a number of benefits that help meet these new challenges. First, the EU offers an economy of scale promising increased efficiencies (for often-stretched member states) and more leverage in foreign energy markets for EU members and commercial players alike. Second, because the EU does
not represent any specific energy company, it cuts a more ‘neutral’ (less politicized) figure in energy relations, helping to diffuse tensions with producer states in politicized markets.

This article makes three important contributions to the literatures on commercial, energy and foreign policy. First, the article challenges perceptions of the EU as unable to co-ordinate diplomatically in energy, by showing how EU commercial diplomacy (which has received less academic attention than other aspects of energy policy) represents an example of effective ongoing external energy co-operation between EU actors. Second, the article presents a more nuanced view of the nature of EU external energy policy by detailing the interaction between EU governance and diplomacy in practice. Rather than contrasting approaches, governance externalization and diplomatic practices can be different means of achieving the same objective: the establishment of a secure investment environment for European energy companies. Here, as will be shown, diplomacy does not function in contrast to governance frameworks, but rather governance is a pre-condition of EU commercial diplomatic action. This analysis thus broadly supports the ‘market-power Europe’ (MPE) view of EU foreign policy as outlined by Damro (2012). However, rather than focus on governance dimensions of the EU’s ‘externalization of its economic and social market-related policies and regulatory measures’ (ibid.: 696), this article assesses the EU’s market-supporting role by examining the links between the EU’s strategic economic diplomacy and its more ad-hoc commercial (business-supporting) diplomacy. Finally, more broadly, this article contributes new understandings of the role of the core tools of investment protection and political risk-mitigation in the EU’s broader international economic arsenal – important given the growth of FDI in the global economy (Parello-Plesner and Ortiz de Solóranzo 2013: 1).

The article comprises five sections. The first describes what is meant by ‘diplomacy’, ‘commercial diplomacy’ and ‘economic diplomacy’, and details their interaction. The second discusses the functional–rationalist theoretical framework and data-collection methods. The third examines EU economic diplomacy and governance promotion in the Caspian region. The fourth considers the structural demand and EU-level supply factors that have driven the growing EU commercial diplomacy role over the last decade. The final section highlights EU and member state limits on this type of activity, explaining why the EU will likely remain an important supplement to, rather than a replacement for, member state commercial diplomacy.

Diplomacy, commercial (energy) diplomacy and economic diplomacy

Diplomacy is ‘a means to a [foreign policy] end’ based on representation, negotiation and communication (Carta 2012: 13). It is essentially an instrument
of foreign policy (alongside others such as governance, aid spending, espionage, etc.) (Hocking 2004: 92). Kostecki and Naray (2007: 1) describe commercial diplomacy as ‘a government activity that aims at the development of socially beneficial business ventures’. From this perspective it is a subtype of broader diplomacy, a means of supporting foreign-operating businesses through representation, communication and negotiation.

Commercial diplomacy can be subdivided into ‘investment promotion’ and ‘investment protection’. Investment promotion entails the provision of business intelligence about market opportunities, ‘partnering’ investors with host country companies and assisting with the negotiation of contracts, especially in sensitive or security-related areas (Naray 2008: 5). The post-investment ‘protective’ dimensions of commercial diplomacy involve primarily what is referred to as ‘conflict-handling’ or ‘problem solving’ diplomacy (ibid.). This concerns assisting companies with the political risks that can emerge in foreign markets, including, _inter alia_, the protection of property rights, engagement on tax and regulatory issues and ‘assistance to national companies which have suffered losses and wish to obtain compensation as well as various forms of support provided as diplomatic protection’ (Kostecki and Naray 2007: 10).

Important for the discussion below is the distinction between commercial diplomacy and broader ‘economic/trade diplomacy’. In the EU context, the establishment of external governance frameworks that define trade and investment terms (such as partnership and co-operation agreements [PCAs]) are the outcome (foreign policy end) of economic diplomacy (the means). Commercial diplomacy is, by contrast, concerned with ‘business-support activities’ for specific companies or industrial sectors (ibid.: 2). However, while different, economic diplomacy and commercial diplomacy are intrinsically interconnected. Indeed, commercial diplomacy aims to take advantage of opportunities established by broader trade diplomacy (Potter 2004: 55). As will be shown below, EU commercial diplomacy is sometimes only possible in the wake of (and certainly enhanced by) broader economic/trade diplomacy that establishes the basis and rules governing foreign investment in the first place.

**Explaining the EU role in commercial energy diplomacy: theoretical framework and data collection**

This article adopts a functionalist–rationalist framework to understand EU commercial diplomatic activity. Such approaches have a long pedigree in studies of EU foreign policy where member states have significant discretion over decisions. Rationalist approaches see EU co-operation as a functional effort to deal with a mismatch between ‘territorial scale’ of policy problems and the limits of ‘political authority’ (Hooghe and Marks 2009: 3; Wagner
2003). Commercial diplomacy is in essence an example of ‘structural’ or ‘milieu-shaping’ foreign policy aimed at managing the challenges presented by (different) political/regulatory environments in countries surrounding the EU (Hyde-Price 2008; Keukeleire 2003; Smith 2004). Murray (1971) has described the mismatch between the territorial scale of foreign investment patterns and political authority as the problem of ‘territorial non-coincidence’. This territorial non-coincidence, reflected in international differences in regulation, property rights and governance practices requires governments to promote ‘state economic functions’ (such as the safeguarding of property rights or regulatory stability) abroad to support foreign-operating companies (ibid.: 85). Because the energy industry is often politicized (Wilson 1987), companies tend to rely heavily on the provision of state economic functions. As Smith (2004: 79) describes (and as shown below), the provision of ‘state economic functions’ and diplomatic support for them is increasingly provided at the EU level. The EU’s commercial diplomacy can be thus seen as a functional means of dealing with energy policy challenges that arise in areas outside of the EU’s territorial jurisdiction where host states are unlikely to provide these functions themselves.

A rationalist view of EU foreign policy action suggests that EU member states (those actors with the capacity to cede foreign policy to the EU level) will do so when the functional benefits of (commercial diplomatic) co-operation outweigh the benefits of maintaining competences at a national level (Hill 1998: 36). One anticipates a number of factors when accounting for EU-level policy through a functionalist–rationalist framework. First, given that the previous status quo was provision of commercial diplomacy by member states, one would expect to see changes in the structural environment creating functional demands for a new (collective) response. It is unlikely that member states or energy companies would seek EU-level policy solutions if member state solutions were sufficient. Second, in response to such changes, one would expect to observe actors demonstrating instrumental rationality and utility-maximization logics (Lewis 2003: 102). Instrumental rationality suggests that actors are motivated by a ‘logic of anticipated consequences and prior preferences’ (March and Olsen 1998: 949). That is to say that member states’ decisions are influenced both by their existing preferences and the extent to which future co-operation is likely to be able to meet them. Utility maximization, likewise, would suggest that states are concerned overall with weighing up trade-offs (in this case the pros/cons of EU co-operation and delegation) (Lewis 2003: 102). Here, one would also expect to see member states placing restrictions on commercial diplomatic activities that went beyond that necessary to deal with the challenges faced. Third, for EU-level co-operation to be chosen as the means of responding to functional demands, EU-level action must supply benefits that cannot
be realized at the member state-level alone. As discussed below, all of these factors are evident in the case here.

The analysis below is structured around the demand and supply factors that explain increased EU-level commercial diplomacy co-operation. In particular, the sections below will highlight the functional demands created by increasingly challenging territorial non-coincidence in the Caspian (that puts pressure on companies and the member states alike) and the benefits of providing state-economic function-supporting diplomacy at the EU level.

**Data collection**

This research employs several different data sources. The main source was interviews with officials from the European External Action Service (EEAS), the European Commission (Directorates-General [DGs] Trade/Energy), the energy industry and EU member states. Totalling over 40 interviews, these were conducted as part of a broader project between 2011 and 2015 in Brussels, Kazakhstan and Belarus. Given the limited public information and political sensitivities of this issue area, interviews were an essential means of data collection. All interviewees were/had been involved in the Caspian region, permitting access to first-hand accounts and triangulation between perspectives. The second primary data source was contributions to the EU's public consultations on energy in 2006 and 2011. A number of factors suggest that these are reliable accounts for the purposes here. First, documents frequently both contradict and support EU official positions suggesting that they are not mere platitudes. Second, false responses could be used against actors in the future. Third, similar objections/positions are often raised independently by similar actors. Finally, stated positions also triangulate with data collected from interviews.

The data analysis approach used in this paper is qualitative content analysis (QCA). QCA refers to techniques used to analyse qualitative data including purely qualitative methods that examine the informational content of data for detail and meaning (Hsieh and Shannon 2005: 1277). In particular, this work involved directed QCA that is used to test hypothesis and to ‘validate or extend conceptually a theoretical framework or theory’ (ibid.: 1281). The use of this approach is more restricted with regard to the interview data than document-derived data, as interviewees generally preferred not to be quoted verbatim. Nevertheless, the interview data are valuable in this case as they present detailed information on the subject matter, much of which is not available publically. Furthermore, the data can still be analysed in much the same way as the textual data, i.e., via coding, the looking for patterns and, ultimately, as a source for the testing of theoretical assumptions.
EU economic diplomacy and governance promotion in the Caspian: 1990s to mid-2000s

The EU has had an active economic/trade diplomacy policy in the Caspian region since the early 1990s. Following the fall of the Union of Soviet Socialist Republics (USSR), EU regional reconstruction packages, such as Technical Assistance to the Commonwealth of Independent States (TACIS) and the associated Interstate Oil and Gas Transport to Europe (INO Gates) programme sought to provide economic aid and know-how to the newly independent states (NIS) with the objective of bolstering energy infrastructures and increasing regional energy integration between the EU and the countries of Eurasia (Hadfield 2008: 325). Likewise, in the early 1990s the European Commission was instrumental in pushing forward early (but important) governance frameworks. The European Energy Charter Process started in 1991 (subsequently Energy Charter Treaty [1994]) sought to balance NIS investment needs, with investor protection and trade provisions for foreign companies derived from EU and the General Agreement on Tariffs and Trade (GATT) (now World Trade Organization [WTO]) rules. Similarly, the mid-1990s saw the adoption of EU PCAs (covering trade and energy) with states in the region (Kazakhstan in 1995 and Azerbaijan 1996). However, with Caspian states keen to attract FDI and build their global reputations, they offered relatively benign investment conditions, and companies and member states (sometimes with support of the United States [Goel 2004]), were largely able to manage issues that arose from doing business in these markets. Between the 1990s and the early 2000s, the Caspian Sea region did not feature especially prominently on the EU-level foreign policy agenda (Lussac 2010: 609).

Mid-2000s: up-scaling EU economic diplomacy and governance promotion

It wasn’t until the mid-2000s that the EU increased considerably its energy engagement in the Caspian region. This was due, in no small part, to changing perceptions of the EU’s energy dependence on Russia following the 2006 Ukrainian gas crisis. This, and subsequent gas crises (Belarus 2007 and Ukraine again in 2009), damaged European perceptions of Russia as a reliable energy supplier, adding to the tense atmosphere of heightened global demand and rapidly increasing energy prices (Lussac 2010: 619; Schmidt-Felzmann 2011: 575). Given their resources, proximity to the EU and potential as sources of diversification, Caspian states loomed into focus for EU policymakers as a strategic concern (Youngs 2009: 101).

In 2004, the EU included the countries of the South Caucasus and Central Asia in the ‘Baku Initiative’, a Black Sea–Caspian Sea energy framework designed to facilitate energy co-operation with the EU. This was up-scaled
in 2006 with the signing of the ‘Astana Road Map’ that included, *inter alia*, a more detailed focus on energy investment. The EU signed energy ‘memoranda of understanding’ (MOUs) with Azerbaijan and Kazakhstan in 2006 and another in 2008 with Turkmenistan. In 2007, the EU launched its Central Asia Strategy, with ‘energy and transport’, ‘economic development, trade and investment’ and ‘the rule of law’ as three of the seven core strategic areas of co-operation. In the Caucasus, Azerbaijan was included in both the European Neighbourhood Policy (ENP) in 2004 and the Eastern Partnership (EaP) in 2009 – both seeking to facilitate energy co-operation (see Youngs 2009).

Importantly, governance frameworks offered EU officials more opportunities to supplement governance promotion with (commercial) diplomacy. Under the auspices of the energy MOUs, for example, the EU holds annual meetings with representatives from Caspian states to discuss energy-related issues of common interest – including energy business matters such as investment conditions and export rules. The EU also discusses energy matters at diplomatic engagements such as annual bilateral Co-operation Committees and (higher-level) Co-operation Councils, as well as (in the Central Asia case) EU–Central Asia Ministerial Meetings. These meetings cover a multitude of co-operation issues covered within the PCAs and the Central Asia Strategy, including energy. In both cases, the most politically sensitive discussions (concerning energy relations with Russia, for example) are discussed at (off-the-record) lunches, with only senior officials in attendance.

Furthermore, economic/energy governance frameworks play another essential role in underpinning EU commercial diplomacy. Once agreement had been reached on governance frameworks (a product of economic diplomacy), one can then use these agreements as a basis for commercial diplomatic action. Rather than two different approaches, officials suggest that the norms/rules contained in the EU’s legal and governance arrangements with a producer state that provide the basis for the EU to act. The more detailed and extensive the EU’s economic governance agreements, the more scope they give EU actors for commercial diplomacy.

**From governance frameworks to in-country commercial diplomacy: demand and supply factors in the shift to EU-level commercial diplomacy in Kazakhstan**

While stepped-up economic diplomacy and governance promotion in the Caspian provided a *basis* for commercial diplomacy, ‘in-country’ factors played a big role in the upscaling of commercial diplomacy in practice. By 2006 some European companies were also calling for an enhanced EU commercial diplomatic role in the Caspian. Their interests, however, lay less in
supply diversification than the increasing investment challenges they faced after the mid-2000s.

**New functional demands: an increasingly challenging structural environment**

In line with the Wilson’s (1987) ‘petro-political cycle’ that sees oil markets becoming politicized during times of high oil prices, the investment climate became more challenging in oil-producing countries across the globe during the period of high international oil prices after the mid-2000s (roughly 2004–2014). Outside of Russia, the situation in Kazakhstan was the most difficult in the Former Soviet Union (Domjan and Stone 2010). This is owing to a number of incidents where the Kazakh government is alleged to have used environmental and project development issues to put pressure on foreign investors and to forcibly wrest a greater share of key energy projects (Bremmer and Johnston 2009: 151). In addition to this, during this period Kazakhstan boosted the role of the state in the natural resources sector by (inter alia) increasing regulation on foreign companies, particularly that concerning local content requirements and changing laws to give the state oil company KazMunaiGas a bigger role in energy projects (Kennedy and Nurmakov 2010). The net effect was a more challenging and less predictable environment for foreign investors by the mid-2000s than had been the case over the previous decade.

EU public consultations on energy policy launched in 2006 highlighted the desires of European companies already active in the Caspian region for greater EU-level engagement (BG Group 2006: 7–8; Statoil 2006: 9). By 2010/11, a broader range of companies and business associations were calling for an increased EU role in diplomatic support for businesses abroad, including in the Caspian. The Italian oil company Eni (2011: 4), which experienced a series of major investment dispute with the Kazakh government, argued that the ‘primary aim of any EU energy external action should be that of applying all political tools at the EU level to guarantee international investment protection’. The European natural gas industry association – Eurogas (2011: 3) – noted that EU political dialogue (i.e., diplomacy) with suppliers ‘can only be beneficial for the business climate’. Shell (also active in Kazakhstan) called for EU political support in Central Asia, arguing that a ‘significant up-scaling of Commission and member state government financial and political resources invested in Central Asia is needed’ (Royal Dutch Shell 2011: 4). Shell also noted a role for the EU in intergovernmental agreements and called for help with sovereign risk and political support in general (ibid.: 6).

Likewise, and perhaps more surprisingly, in both the 2006 and 2011 consultations member states echoed these calls. Indeed, in 2006 the United
Kingdom (UK) government (2006a: 25) suggested that ‘the UK would also support continued working between the Commission and businesses active in Russia, Caspian and Central Asia to get a better understanding of the problems of doing business there’ (UK Government 2006b: 4). UK officials spoken to in 2012 praised EU co-ordination on energy, welcoming the fact there was by then a dedicated EU energy officer covering the Central Asia region from Astana. In 2011, the French government (French Permanent Representation 2011: 2) noted that:

an important objective of partnerships between the EU and producing countries (notably gas producers) must be support for European energy companies present in these countries, who are, and who will remain, the principal agents of European energy supply.

Likewise, the Czech government highlighted the EU role in ‘protecting European investments’ (Government of the Czech Republic 2011: 1–2).

**Meeting functional demand: ‘problem solving’ co-ordination and commercial diplomatic representation**

In Kazakhstan, demands for an upscaling of EU investment protection have been matched by increased commercial diplomacy. In particular, EU activity has been up-scaled in terms of both intra-European co-ordination and representation on commercial diplomatic matters.

**Co-ordination**

In Astana, the EU delegation contributes a number of forums for member states, companies and external partners to co-ordinate on commercial energy matters. One member state official noted that the EU delegation in Astana is very good at co-ordinating member state responses to problems that arise and suggested that this leads to a stronger overall position for those member states involved. Regular working group meetings held at the EU delegation itself bring together energy and trade officials from member states and the delegation, and provide the opportunity to also invite Kazakh officials to explain policy changes. These meetings are a forum for discussing developments and formulating co-ordination actions when necessary. Likewise, informal ‘energy lunches’ are organized by some of the prominent member states, the EU delegation and the US Embassy every six weeks to discuss energy matters. Co-ordination also is necessary with European firms active in Kazakhstan. Companies have access to EU officials in Astana and are in regular contact with member state and EU officials in Brussels. In Astana the EU delegation, many EU member state embassies and a number of European energy companies are all located in the same building. Companies, one EU official noted, tend to rely on personal relations when they decide who to approach in the EU and member states. They do, however,
regularly approach the EU directly rather than going indirectly via member states.\textsuperscript{16} Officials recognize that the nature of the industry structure in Kazakhstan and the joint-challenges that companies face means that it is often preferable for EU member states and companies to co-ordinate together in response to issues, rather than to act separately.\textsuperscript{17} Concerns for one company often reflect wider problems for the industry as a whole, so EU officials or representatives are able to co-ordinate and raise it as a broader issue.\textsuperscript{18}

**Representation**

EU involvement in commercial diplomacy goes beyond co-ordination, however. Officials from the EU delegation often represent European actors at commercial diplomatic fora such as the Kazakhstan Foreign Investors’ Council (FIC) chaired by the Kazakh president or prime minister. This is the highest-level regular meeting of this type in Kazakhstan, with the EU regularly represented by the head of delegation and head of trade section.\textsuperscript{19} Numerous events or policy changes that have a negative impact for European companies can trigger such representations. One example was changes to ‘local content rules’ in 2011 that placed restrictions on hiring foreign workers and made it difficult for European companies to recruit employees with the requisite skills. EU officials, in conjunction with member states and companies, organized a successful campaign, employed at technical and political levels (such as EU PCA meetings and the local Kazakh FIC in Astana), to have rules relaxed for major energy investors in Kazakhstan who were most affected.\textsuperscript{20} More recently, in 2015, the EU delegation co-ordinated with the US and Canadian Embassies to write a ‘non-paper’ on three ongoing issues facing energy companies in the region (gas flaring fines, visa problems for energy company officials and restrictions on engineering licenses).\textsuperscript{21} The EU played an integral lobbying role: co-ordinating the positions of member states, co-writing the paper in conjunction with the US and Canada and then actually representing the EU at the presentation of the paper at the FIC.\textsuperscript{22}

In the event of a dispute with the Kazakh government, EU officials describe a number of commercial diplomacy options. First, EU officials can use low-level technical meetings with Kazakh officials to raise an issue and explore options for a speedy resolution. Second, the delegation can use contacts in the Kazakh government to send an official letter or have a meeting to set out their point. Examples include a joint letter sent by the EU on behalf of a number of member state ambassadors to the Kazakh prime minister on the imposition of new (more restrictive) licences for engineering companies (a recurring issue).\textsuperscript{23} Third, the EU can also send an official \textit{demarche} to the Ministry of Foreign Affairs which will often be followed up by a meeting with Kazakh officials. Such meetings will sometimes be undertaken by the EU delegation (with member states and companies kept informed by verbal and written briefings),\textsuperscript{24} and at other times officials from the delegation may go
to meet Kazakh counterparts with a number of member state officials or ambassadors present (and sometimes those from non-EU states such as the US). On major problems, officials will raise issues at multiple venues and levels, signalling the importance of a specific dispute. Tactics chosen reflect both the seriousness of a case and what is considered to be the most effective means of dealing with it.

Supply-side explanations: the functional ‘value-added’ of an increased EU role in commercial diplomacy

That member states and energy companies faced an increasingly difficult environment does not, in and of itself, explain why member states delegated this new commercial diplomacy role to the EU. To complete the explanation, it is necessary to examine the functional benefits (for both member states and energy companies) that EU-level action provides.

EU ‘value-added’ 1: economy of scale and increased leverage

Member states recognize that EU-level action offers greater efficiency and leverage than individual member state action. While small member states prioritize the most important countries in their respective external environment, larger states (such as France, Germany, Italy and the UK) try to cover all geographical regions, and consequently get stretched in places like Central Asia where they have fewer resources and less representation. As EU officials note, when member states have common perspectives on a specific issue, the EU’s co-ordination and representation capacity provides an important source of efficiency and EU ‘added-value’.

However, increased influence is perhaps a more important benefit of EU-level action. Directly linking the more challenging structural environment and increased EU-level action, one German government official acknowledged that as international energy relations have become more challenging (given the increased assertiveness of producers), the EU was consequently evolving to meet this reality. A UK government official noted the extra influence in the Caspian region that comes from working in collaboration with other EU states (and sometimes non-EU states, Switzerland or Norway). They stressed that while UK lobbying gets noticed, political pressure is more effective when member states are speaking for all European companies in conjunction with delegations. The EU’s weight as a trading bloc is thought to be a particularly important factor that backs up this influence when interacting with Caspian governments. Operating at the EU level, larger member states gain more influence than they would alone, and smaller member states get their voices heard when they otherwise might not be.
Companies also value the increased leverage that EU action presents. In a more challenging environment, one official from a prominent energy company described how the EU might be able to replace the US as a key market-supporting player if it developed in the ‘right way’ (i.e., developed a strong capacity for providing political support and the projection of influence). They suggested that US backing has waned and that the EU needed to fill the void. Similarly, RWE note that creating a stable political/regulatory environment outside of the EU may be an impossible task for both industry and individual member states, and only possible at the EU-level (RWE 2011: 3).

**EU value-added 2: an additional source of political support**

Companies, however, also value the EU as an additional source of support when member states are unwilling or unable to intervene on their behalf. Indeed, engagement with the EU is an important part of their risk mitigation strategies, as being dependent on a single source of support (i.e., just their home member state) carries risks (Henisz and Zelner 2011: 214). Governments may value issues differently to companies and may sacrifice company objectives for broader political issues. While not from the Caspian region, Argentina’s nationalization of Spanish company Repsol provides an example. Following the expropriation in 2012, the EU started WTO proceedings against Argentina, partly as a response to the nationalization. The Spanish government had reportedly been warned by its trade lawyers of risks to other Spanish companies in Argentina had it acted unilaterally, and thus it opted to raise this issue via the EU (Minder 2012). This highlights how other considerations (the interests of other Spanish companies) might have limited Spain’s ability to respond to the Repsol crisis – leaving the EU as a valuable alternative option for the company (ibid.).

**EU value-added 3: a more ‘neutral’ source of business support in politicized markets**

The EU is also thought by EU officials, member states and companies to be a more ‘neutral’ actor than other international players (and most member states) in international affairs. One EU official contended that Central Asian states trust the EU more than the US, Russia or China and that the lack of defence/military dimension to EU external interaction in the Caspian region reduces fears of the EU relative to others. Importantly, the EU does not represent a single/small number of national energy companies and is consequently seen to be less subjective with regard to energy matters (it does represent the ‘common EU’ interest however of course – see below). This is especially important at times of high politicization. Member states officials
express similar opinions. One German official, for example, contended that, from the perspective of Central Asians, the EU is seen to be far away and a more neutral actor than others.\(^{37}\) Action through the EU can also neutralize potentially negative perceptions amongst third-party actors of single European states based on historical factors or previous disputes.\(^{38}\) Another official from an EU member state suggested that the EU banner is useful when a member state wants to deliver a difficult message in a Central Asian country as third parties were less likely to get upset if the message emanates from the EU.\(^{39}\) Under these circumstances, the EU provides forms of ‘institutional camouflage’ (Wood 2009: 613), where raising problems under the EU banner avoids singling out companies or member states that may otherwise face repercussions.\(^{40}\) Indeed, energy companies stress that the EU should seek to retain this neutral image, acting as a mediator, maintaining positive relations with producer states and refraining from actions that might cause political/commercial tensions (Royal Dutch Shell 2011: 6).

The EU’s ability to perform this role thus depends on the broader political relationship. In addition to questions concerning legal and governance regimes, companies most commonly lobby the EU to maintain positive political relations with third-party countries.\(^{41}\) Demonstrating, the instrumental pragmatism described previously, member states also avoid using the EU when political relations between the EU institutions and a host country are not good. For example, one official noted how the EU approach is not as effective in Belarus, for example, where the EU institutions are viewed negatively owing to EU-level sanctions.\(^{42}\) The same is sometimes the case in Uzbekistan, where the EU applied sanctions in 2006.\(^{43}\) In these markets, trying to resolve disputes via the EU can cause problems. As such, member states are less likely to use EU-led approaches.

This ‘neutral’ appearance is particularly useful for companies when both a company and home government are involved in (different) disputes with a producer government. Under such circumstances a company may wish to minimize their association with their government so that the wider dispute does not hinder the resolution of the company’s particular issue.\(^{44}\) An energy expert interviewed noted how UK officials have at times been unable to help British energy companies in Russia because of difficult Russia–UK bilateral relations.\(^{45}\) Under such circumstances, the EU presents a more viable source of political support.\(^{46}\)

**The limits of EU commercial diplomacy?**

Does this therefore signal the beginning of the end for member state commercial energy diplomacy? Several factors suggest not. Firstly, given the need to avoid ‘picking winners’ amongst companies (or member states), European officials self-impose limitations on EU commercial diplomacy. While
companies are concerned with gaining representation for themselves (and often a privileged position vis-à-vis other companies), officials stress that it is not the job of the Commission/EEAS to intervene on behalf of particular companies but rather, as described above, the EU should engage when norms/rules that affect the general interest of the industry are infringed. It is clear that officials do not want be seen as on the ‘side’ of the companies (either back home or vis-à-vis the host state). Of course, sometimes a specific dispute (corruption attempts, tax issues, government pressure, etc.) infringes a wider rule/norm, and under those circumstances it would be, in their opinion, the EU’s responsibility to react. EU action would of course therefore benefit a specific company in that particular instance, but this would be a secondary consequence of EU action, rather than a direct motivation.

Second, it is important to note that member states have shown signs of limiting the EU’s role as well. While the commercial diplomacy discussed above helps deal with the new pressures in Kazakhstan, it does not entail a full shift of commercial diplomacy competence to the EU. Reflecting this instrumental rationality discussed above, the UK government argued in 2006 that EU representation in the Caspian should be at the ‘right level’ with the ‘right competencies’ ‘to add value to the relationship between the EU and the region’s governments’ (2006b: 4; emphasis added). Indeed, member states have sought more EU ‘protective’ commercial diplomacy, but have not pushed for more EU involvement in investment promotion, which remains largely a member state competence. EU officials do engage in some investment promotion, organizing fairs and workshops, for example, where commercial partners meet and come together. However, they are obliged to offer and advertise these opportunities widely (usually via energy business associations) rather than to specific companies. Member states by contrast retain the right to push individual deals and facilitate commercial arrangements for targeted national businesses.

Furthermore, the effectiveness of the EU institutions’ ability to support companies rests in part on their perceived ‘neutrality’. If the EU were seen to be directly reflecting the interests of companies, this source of influence would be diminished. This limit of stressing the general public European interest, rather than private or national interests, makes the EU a more neutral arbiter and better able to defend governance rules. EU officials suggest that being able to appeal to global rules in energy investment has considerable traction in some contexts, such as Kazakhstan, where the government is keen to present itself as an internationally engaged economy (and thus concerned with reputational damage). However, remaining neutral places restrictions on support for companies (especially in terms of investment promotion). Member states face fewer restrictions. Consequently, while the EU plays an increasingly more active role in commercial energy diplomacy (especially in investment protection), the EU is likely to remain a useful additional source
of diplomatic support for companies, rather than a replacement for member states.

**Conclusion**

In the face of a more challenging (and increasingly ‘non-coincident’) structural environment in foreign energy markets from the mid-2000s onwards, the EU has adopted a more significant role in commercial energy diplomacy in the Caspian. While member states are generally hesitant to delegate to the EU in strategic areas, the increasing politicization of energy markets has made it difficult for member states to support companies and created functional demand for EU-level commercial diplomacy. Taken together, the observations set out above present a number of important implications for the literature on EU foreign economic and energy policy.

First, by examining the behaviour of European actors in the Caspian, this article has documented a clear area of EU diplomatic co-operation in energy – challenging, at least in one area, the conventional view of a discordant EU external energy policy. The increased efficiencies offered by EU coordination, the greater influence of combined EU representation and the more ‘neutral’ position of the EU institutions means that EU commercial diplomacy provides advantages for member states and companies, especially in politicized markets. Findings here are of course specific to the Caspian/Kazakhstan, but the examples from Russia/Argentina suggest a broader applicability and scope for further research. Given the general view of energy as an area characterized by a lack of diplomatic co-operation, this is a significant observation.

Second, this article contributes to debates about the nature of EU energy policy. The EU has largely been seen as a market-promoting actor in energy, with the core driver of EU policy being the promotion of governance contra the more ‘geo-political’ diplomatic approaches of member states. This article broadly supports the ‘market-power Europe’ view of EU in terms of energy. However, it does so by showing how EU commercial energy diplomacy and EU energy governance need not be contrasting approaches, but rather different means of achieving the same foreign policy goal: a more secure external environment for energy businesses, primary agents of European energy supply and diversification. Indeed, as described above, governance frameworks are not necessarily established in opposition to diplomacy, but rather are a precondition for effective (commercial) diplomatic action.

Finally, beyond the implications for energy policy studies, the article has begun analysis of the commercial diplomatic practices of both member states and EU institutions. This is significant, as EU commercial diplomacy has generally received little academic attention. The data above show that
member states are prepared to co-operate diplomatically in sensitive commercial areas, but that they are also strategically selective. While member states have delegated an important commercial diplomatic role to the EU in investment protection, they have been more hesitant to cede ground on investment promotion (where acting nationally is still advantageous). For their part, the EU institutions are limited in terms of investment promotion, both by a desire not to be seen to be ‘picking winners’ and need to remain ‘neutral’ (which companies and member states actively demand it does). Furthermore, member states demonstrate pragmatism in their uploading of commercial issues/disputes to the EU level. When the EU doesn’t offer benefits of ‘neutrality’ (in Belarus or Uzbekistan, for example), member states are less inclined to use the EU for commercial matters.

Given the observations above and the growing role for FDI in the global economy, these findings present a strong basis for further research into EU commercial diplomacy, both in other energy-rich areas (such as the Middle East, Latin America or sub-Saharan Africa) and in different commercial sectors outside of energy. Indeed, as the world becomes more ‘multi-polar’ and as EU-preferred trade and investment norms are increasingly challenged globally, the EU is likely to emerge as an important source of commercial diplomatic protection for EU member states and EU foreign-investing companies – albeit as a source of support to, rather than a replacement for, member states’ own commercial diplomatic activity.

Notes

1. Given the political/economic sensitivities surrounding energy policy, all interviewees requested that data be used in a non-attributable way and as such no identifying information regarding interviewees is given in this article. A few interviewees requested complete anonymity. In these cases their institutional affiliation is also omitted.
2. Interview, energy company official, 20 November 2015.
3. Interview, EU Commission official[a], 20 July 2015.
4. Interview, EU Commission official, 27 July 2011.
5. Interview, EU Commission official, 9 March 2015.
6. Interview, EU Commission official, 17 February 2015.
7. Interview, EU Commission official[a], 20 July 2015.
8. Ibid.
9. Interview, EU Commission official[b], 20 July 2015.
10. Statoil is of course not an ‘EU’ company but one that nonetheless has an important supply and business relationship with EU firms and states.
11. Interview, UK government Official, 20 August 2012.
12. Interview, EU member state official 20 August 2012.
13. Interview, EU Commission official 16 August 2012.
14. Interview, EU member state official 20 August 2012.
15. Interview, EU Commission official 16 August 2012.
16. Ibid.
17. Interview EU member state official 20.8.2012
18. Interview, EU Commission official 16 August 2012.
19. Interview, EU Commission official[a], 20 July 2015.
20. Interview, EU Commission official 9 March 2015.
21. Interview, EU Commission official[a] 20 July 2015.
22. Ibid.
23. Interview, EU Commission official 16 August 2012.
24. Interview, EU Commission official, 16 August 2012.
25. Interview, EU member state official, 20 August 2012.
26. Interview, EU Commission official, 9 March 2015.
27. Interview, German government official, 23 May 2012.
28. Interview, EU Commission official[a], 20 July 2015; Interview, EU Commission official [b], 20 July 2015.
29. Interview, German government official, 23 May 2012.
30. Interview, UK government official, 20 August 2012.
31. Ibid.
32. Ibid.
33. Interview, energy company official, 20 November 2012.
34. Interview, energy company official, 20 November 2012.
35. Ibid.
36. Interview, EEAS official, 28 July 2011.
37. Interview, German government official, 23 May 2012.
38. Ibid.
39. Interview, EU member state official, 20 August 2012.
40. Interview, EU Commission official, 17 February 2015.
41. Interview, EU Commission official 19 July 2011.
42. Ibid.
43. Interview, EU Commission official[a], 20 July 2015.
44. Interview, energy company official 20 November 2012.
45. Interview, energy expert, 20 November 2012.
46. Ibid.
47. Interview, EEAS official 21 July 2012.
48. Interview, EU Commission official, 19 July 2011.
49. Ibid.
50. Ibid.
51. Interview, EU Commission official[b], 20 July 2015.
52. Ibid.

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