

Chapter 2

How does policy capture happen?

This chapter explains capture of public decision-making processes in more detail. It describes the main features of policy capture, the mechanisms through which it can be achieved, and the actors typically involved. The chapter closes with an overview of the main risk factors. This generic risk map is intended to provide guidance to policy makers in diagnosing capture risks.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

The goals and actors of policy capture

The typical favours private interests can expect to receive from public actors range from favourable legislation and regulations (or decisions on their implementation) to obtaining specific contracts, emission-measurement methodologies or the formula to calculate the tariff for a regulated public service contracted out to a private provider.

Documented favours include capture of public decisions at such different levels as:

- the systematic award of public procurement contracts (Fazekas and Tóth, 2014)
- granting tax breaks or state subsidies (Slinko, Yakovlev, and Zhuravskaya, 2004)
- access to public loans (OECD, 2016a)
- the creation and allocation of monopolistic positions in competitive markets (Innes 2014; Portman, 2014)
- the selling of public assets, e.g. prime local authority real estate, below market price (Rádi, 2015).

Actors from both the public sector (i.e. elected officials and civil servants) and the private sector (e.g. business owners or brokers) are involved in capture (Gounev and Bezlov, 2010; Szántó, Tóth and Varga, 2012; Wedel, 2003), acting either as individuals or as part of a group (e.g. members of special-interest or advisory groups). Business owners, former politicians and brokers can also act as professional lobbyists.

In Canada, for example, the Charbonneau Commission found, amongst others, that a network of vested interests, including political parties, private engineering and construction firms, unions and organised crime, had infiltrated and captured the awarding of public contracts in the construction sector. This happened through various channels, including political contributions, practices of influence peddling, and direct monetary bribes (Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, 2015).

Typically, capture relationships involve at least two actors, i.e. one each from the public sector (even if the public actor is not aware of being captured) and the private sector:

- **Elected public officials:** politicians at the national or subnational level are central to political decision-making and in control of public resources. High-level politicians can influence agenda-setting and spending priorities (e.g. what should be procured, and where) and control policy implementation through people loyal to them in the

public administration. They can also provide insider information giving an unfair regulatory or bidding advantage to the companies linked to them. Their role is predicated on their broad discretion in decisions that can help their private-sector connections earn rents directly (e.g. through an individual decision) or indirectly (e.g. through a new law). Given the competition for key decision-making positions, these public actors often rely on private resources – e.g. large campaign-finance donations – to attain these positions, making them particularly vulnerable (OECD, 2016a).

- **Public officials:** as defined in Article 2 of the United Nations Convention Against Corruption (UNCAC), public officials comprise “(i) any person holding an executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority: (ii) any other person who performs a public function, including for a public agency or public enterprise, or providing a public service...” (UNCAC). Public officials clearly have a considerable amount of discretion – e.g. in preparing laws and regulations, deciding on the use of public funds, organising and managing the public procurement process (drafting tender specifications, evaluating bids and communicating with contractors), or formulating the rules of economic regulation and competition – and are therefore potential targets for capture (although it should be noted that they may simply be following orders of higher-ranking officials). If directly involved, their readiness to skew their decision in favour of a specific interest can be facilitated by favours (e.g. the promise of a highly paid position in the private sector, the “revolving door”) or more immediate benefits (e.g. lucrative gifts). But public officials can also be captured by threats (for instance, the specific interest could use real or fake claims to blackmail a public official) or unawares (by providing false information to skew a decision, or creating social and/or emotional ties with the official).
- **Business owners/managers:** they control the companies that earn rents (such as becoming the sole bidder in a public procurement tender, or benefitting from a monopoly protected by regulation) from a privileged economic position. Business owners and managers can build close relationships with public officials, support their struggle to get key decision-making positions, or simply fund their private consumption (e.g. luxurious travels, expensive cars). State-owned enterprises sit at the intersection of the private and public spheres, allowing for rent extraction as well as rent generation; those that hold key monopolies (e.g. in energy markets) are at particularly high risk of capture. Captured state-owned enterprises, and the rents obtained through them, have been used by powerful individuals to further

their political careers or finance politicians and political campaigns (Romero, 2014; Krauthamer, 2014).

- **Brokers/intermediaries:** while they tend to receive comparatively less attention, brokers can play a decisive role in creating and maintaining capture (Jancsics and Jávör, 2012; Wedel, 2012). Brokers (such as public-procurement advisors or tax-planning experts) often have legal or specialised knowledge; many (such as former public officials or businessmen) are well-connected. Brokers provide knowledge on ways of hiding illegal or unethical activities behind legal entities and procedures (e.g. a seemingly open competition for a government contract). Depending on the interest of the captor group, brokers can also create trust and connect previously unrelated individuals. Their position should therefore not be underestimated.
- **Lobbyists:** while lobbying is a fact of life in all countries, it is often perceived as an opaque activity resulting in undue influence to the detriment of fair, impartial and effective public decision-making. Although lobbying often trains its sights on the legislative branch at the national and subnational levels, it also targets the executive branch of government (e.g. to influence the adoption of regulations or the design of projects and contracts). In most countries, lobbying is seen as perpetuating special interests at the expense of the public interest. The literature has noted that the disproportionate, unregulated influence of interest groups may lead to capture (OECD, 2014a; Kaufmann, Hellman and Geraint, 2000).
- **Advisory/expert groups:** governments in OECD countries make wide use of advisory/expert groups in the guise of advisory/expert groups or subgroups that provide governments with advice, expertise and recommendations. These groups comprise representatives from the public and private sectors, civil society and academia, and are established by the executive, legislative or judicial branches of government. In an OECD survey on lobbying (OECD, 2014a), more than half of the legislators responding said they worked with advisory groups; 82% of OECD country respondents said they regularly consulted advisory groups when drafting primary laws.

Powerful private interests' capture of advisory groups poses a serious risk to the integrity of policy making: for example, when corporate executives or lobbyists advise governments as members of an advisory group, they act not as external lobbyists, but as part of the policy-making process, with direct access to decision-makers. Up to 79% of the legislators surveyed (OECD, 2014a) believed that advisory groups wielded influence over policy making and outcomes; nearly half (47%) felt that advisory groups were driven by special interests, rather than by the public good (OECD, 2014a).

Vehicles of policy capture: How are public decisions captured?

The above discussion of the actors involved in capture has already provided insights on the practical mechanisms of capture. Table 2.1 summarises the channels that can be misused by private individuals and special interest groups to directly or indirectly influence public officials. Most are perfectly legal and legitimate, and may even constitute important means to promote participation in public decision-making. Nonetheless, these channels may be abused for

Table 2.1. **How public officials can be influenced by individuals and special-interest groups**

Direct influence	<p>Creating a sense of reciprocity</p> <ul style="list-style-type: none"> • Illegal payments • Favours, such as: <ul style="list-style-type: none"> - political campaign funding - hosting receptions - offering future jobs - other benefits, such as expensive presents • Providing research and analysis • Threats against public decision-makers
	<p>Building on existing personal ties</p> <ul style="list-style-type: none"> • Family and other close relationships • Networks • Affiliations • SOEs • Politicians as board members • Revolving doors
	<p>Building on strategic communication</p> <ul style="list-style-type: none"> • Meetings, conferences, study trips
	<p>Building on strategic communication</p> <ul style="list-style-type: none"> • Broad concerted action through media ownership • Writing media comments, articles, columns or letters to the editor • Issuing press releases, holding press conferences • Participating in public hearings and consultations • Grassroots lobbying
Indirect influence	<p>Building on expertise</p> <ul style="list-style-type: none"> • Publicising analytical reports and other research • Participating in expert or advisory groups and consultations • Using think tanks to produce research • Responding to requests for comment • Providing manipulated information and expertise

capture purposes – participation then shifts from promoting inclusion to become a tool for exclusion.

While some types of influence (particularly direct influence) can be clearly identified as illegal practices – e.g. illegal payments (bribes) or manipulating information submitted to policy makers (fraud) – many forms of influence can be either illegal or legal, depending on the specific circumstances and applicable national laws. For instance, gifts can be illegal if they exceed a specific threshold, and if the public official does not report acceptance of the gift to a supervisor/relevant contact person.

Public decision-makers can also be threatened in various ways by certain interest groups (Dal Bo and DiTella, 2003). Physical violence is only the most extreme kind of threat; more subtle threats include smear campaigns, negative rumours or misinforming the media. Interest groups can also abuse justice to harass public officials, e.g. by initiating litigation aiming to show the illegality or administrative incompetence of a decision taken by the official, or levying accusations about some real or fictitious crime. Even if the public official eventually wins the case, significant costs and reputational damage would arise (Dal Bo and DiTella, 2003). Faced with such threats, even honest public decision-makers may make biased policy choices.

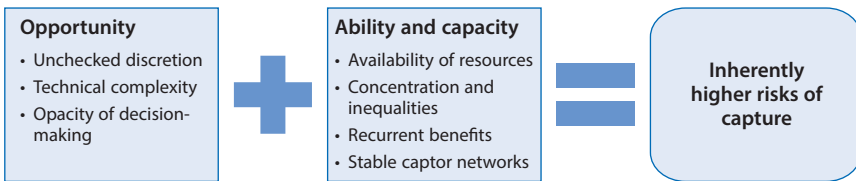
Indirect influence can be exerted by interest groups providing biased information. For example, while public officials are likely to have less information than manufacturers or traders, they need information to take decisions (e.g. on specific technologies). Private actors could provide information leading to captured policy making, either directly – by delivering data, information or studies directly to public officials – or indirectly – by providing the information to relevant government advisors (Helm, 2010).

Finally, capture can also simply result from repeated interaction between public officials and companies or other powerful pressure groups. For instance, energy regulators and regulated energy companies, or health-policy makers and the pharmaceutical industry, are likely to meet, exchange information and establish social ties on a regular basis. Over time, this interaction may create growing opportunities for an interest group to collude with the relevant public officials. Public attention may also gradually wane, and with it the pressures to deliver policies in the public interest, making it easier for public officials to tailor policies favouring the interests of those with whom they interact continuously (Martimort, 1999).

A risk map: Inherent factors facilitating and enabling policy capture

The previous sections allow drawing conclusions on several inherent risks and factors facilitating capture, such as opportunities stemming from structural characteristics and weaknesses, the ability and capacity of captors to organise and exert undue influence, and (closely related) the ability to overcome the collective-action dilemma and organise as an effective pressure group (Figure 2.1).

Figure 2.1. Factors facilitating capture of public decision-making processes



The risk factors related to existing opportunities for policy capture are:

- **Unchecked discretion:** the means of exerting influence described above (Figure 2.1) illustrate that the mechanisms for establishing and maintaining capture, while diverse in nature, regularly rely on discretion in the public and/or private sphere. Unchecked and unaccountable discretion makes capture possible (Warren, 2003). Policy fields differ from one another in their susceptibility to capture (and the likely forms of capture), depending on capture opportunities and the effectiveness of existing controls (Lambsdorff, 2007; Nye, 1967; Rose-Ackerman, 1999). This makes some areas of government spending and regulation more fertile ground for capture: policy areas allowing individual decisions and a high degree of discretion in decision-making are more prone to capture. The smaller the number of public officials required to seal and implement a deal, the easier it is to establish and maintain a captor relationship in the absence of appropriate accountability mechanisms (OECD, 2016b; Koske et al., 2016).
- **Technical complexity:** a technically complex issue may be the subject of limited public interest and control. In that context, external analysis and opinions, even if recognisably biased by a special interest, can be considered useful guidance in the execution of a public official's functions.
- **Opacity of decision making:** capture thrives when decisions are not visible to the public. Limited transparency, coupled with a lack of appropriate accountability mechanisms and records of

decision-making processes, increases the risk of capture. For example, in the tax-regulation field, the secrecy of individual tax deals creates wide room for discretionary decisions benefitting specific companies and individuals. Decisions on whether to pursue or terminate a tax investigation are internal to the tax authorities, making public scrutiny difficult – unless a whistle-blower comes forward with insider information.

The risks factors related to the capacity to exert undue influence are:

- **Availability of resources:** economic elites can mobilise ample financial resources to influence policy making. While the sheer amount of wealth may not directly translate into capture, the resources and status being passed on from parents to their offspring (including the formation of political dynasties) heighten the risk of capture (Dal Bó, Dal Bó and Snyder, 2009; Eleftheriadis, 2014; Glaeser, Scheinkman and Shleifer, 2003). Financial resources can be used in various ways: to finance political campaigns, conduct lobbying activities, or convey the necessary messages and arguments to targeted audiences through the media and academics (Solimano, 2014). Meanwhile, depending on the country, candidates for political positions rely on large monetary donations to finance their election campaigns; the higher the need for financial support, the higher the risk of capture. In addition, public officials who decide on the expenditure of public funds are often targeted for capture.
- **Recurrent benefits:** recurrent rent flows allow beneficiaries in both the private and public sectors to plan ahead and stabilise their influence network. In areas where transactions are infrequent and can be postponed or eliminated, capture cannot establish itself as strongly as where transactions are recurrent and not easily terminated. For example, the energy sector’s regular and indispensable services allow for recurrent benefits and are therefore very attractive capture prospects.
- **Concentrated rents and inequalities:** the concentration of rents in the hands of a few makes capture a very attractive means to extract rents. For instance, energy production is mainly concentrated in a few facilities (such as nuclear power plants) and in the hands of a few large corporations, making the concentration and extraction of rents relatively easy to organise. In addition, inequalities between the private and public sectors can facilitate capture: for example, high wages in the private sector may lead public officials to believe they are receiving uncompetitive salaries and feel justified in earning additional money and benefits to “compensate” for this perceived injustice (rationalisation).

- **Stable policy networks:** a stable policy network facilitates capture of public decision-making processes. Repeated interactions over time may facilitate capture, as it becomes easier to establish reciprocity, manipulate information, or test the public official's willingness to take biased decisions. A smaller-size network may facilitate collective action on the part of the captor group.
- **Expectations:** the mere knowledge that a favour is expected encourages co-operation within a captor network. For example, public officials who receive private campaign financing or gifts may feel pressured to grant favours in return.

This generic risk map helps improve understanding of capture dynamics, and can serve as a guide to more in-depth and context-dependent risk analysis, as well as a basis for designing targeted mitigation measures (see Chapter 3). The following two sections discuss in more depth concrete cases of energy and taxation policies.

Policy capture in practice: Two case studies

Capture of tax policy

The media, as well as the academic and policy literature, widely discuss corruption and capture in taxation. Taxation is a cross-cutting government function; it is a compulsory fee or levy, as defined by national and international laws and regulations, paid by individuals and corporations, and enforced by tax authorities (OECD, 2014b). Taxes can be levied on income and profits, on payroll, property, and goods and services, and in the form of social security contributions (OECD, 2013).

Not all taxation types are equally prone to capture, and taxes are captured in different ways depending on their collection and evasion methods. For example, while the global corporate-taxation system has been the subject of intense debate, for example at the G20 forum (OECD, 2013), it has emerged as particularly prone to capture (International Consortium of Investigative Journalists, 2015; Shaxson and Christensen, 2014). The sheer size of potential tax gains from avoiding a mere fraction of corporate taxes amply demonstrates the attractiveness of capturing tax policy.

When it comes to personal income taxes, while the total incomes of the richest has greatly increased in many advanced economies (Piketty, 2014), their effective tax rate has declined, effectively reversing tax progressivity, particularly in the United States (Piketty and Saez, 2007). But the rich also pay fewer taxes than tax principles would suggest in emerging economies, such as India (Associated Press, 2013).

In taxation, the key public resource up for capture is the tax that can be avoided. This can be achieved in two main ways:

- enacting preferential tax laws and regulations allowing for “legal” tax evasion (EUBusiness, 2014; International Consortium of Investigative Journalists, 2015)
- evading tax collection and tax-code enforcement, which occurs when the captor group directly penetrates the tax authority, influencing how it collects taxes and whom it audits.

Use of these two strategies largely depend on the captor group’s capacity to penetrate high-level politics or a bureaucracy (such as the tax authority). While tax fraud, avoidance, or evasion are ends in themselves, they often go hand in hand with a range of other corrupt and capture activities, such as illegal party financing (Anderson, 2014).

The archetype of capture involving the highest echelons of the society (particularly high-level politicians) is legislatures creating loopholes in impartial tax laws enabling preferential treatment of selected domestic or multinational companies (International Consortium of Investigative Journalists, 2015; Slinko, Yakovlev and Zhuravskaya, 2004). Such domestic tax regulations violate international tax treaties (Cellan-Jones, 2014; EUBusiness, 2014). While the originator of such capture relationships remains unclear, what is clear is that high-level politicians’ role in keeping conducive tax laws in place is paramount. It is also possible that domestic tax principles and the integrity of law making are violated when local companies are granted explicitly preferential treatment (Slinko, Yakovlev and Zhuravskaya, 2004).

Evidence is increasingly surfacing that tax havens and jurisdictions with high financial secrecy combine preferential tax deals with secret money flows to lure both legal and illegal global capital (Shaxson and Christensen, 2014; Tax Justice Network, 2013). When the financial sector represents up to 50% of gross domestic product (GDP), the risk of capture in taxation, finance and company registration is particularly high. Such jurisdictions are likely to inflict costs not only on their own economies and societies, but also on countries whose tax base is eroded, or whose corrupt politicians can preserve their illicit income safely and tax-free (The Economist, 2013). High-level politicians can stand on both the supply and demand sides of tax-policy capture, as they not only create the opportunities for tax evasion and avoidance through tax havens, but themselves use these opportunities to hide income and avoid paying taxes. In some cases, high-level politicians play a different role: instead of capturing tax legislation, they can prevent the creation of a strong and independent tax bureaucracy. These actions hamper effective tax administration, creating a range of entry points through which captor groups can control tax policy implementation for their own benefit.

Civil servants play a crucial role in capturing tax policies, either by implementing favourable tax laws (in which case the public administration is not necessarily part of the captor network, as it is simply carrying out political decisions) or by directly supporting corruption through preferential implementation of otherwise impartial rules (in which case the bureaucracy is an indispensable player: the administration is either acting as the captor's main public-sector counterpart, or in tandem with supportive political leadership). In some countries, more complex capture schemes have emerged: organisational units of tax authorities dealing with taxation of large corporations facilitate large-scale rent extraction, with high-level politicians and benefiting corporations actively supporting the network (Anderson, 2014; Hungarian Spectrum, 2015).

Given the complexity of taxation – and particularly of international tax deals – recent high-profile cases worldwide have highlighted the crucial role played by brokers, such as the “Big 4” accounting and consultancy firms. Brokers actively recruit corporations; they possess the crucial technical expertise to make illegal or unethical tax deals (sometimes even drafting the tax code that allows them), generating trust in these arrangements from both public and private parties. Hence, they greatly decrease transaction costs, and increase the trust and stability of captor networks (International Consortium of Investigative Journalists, 2015).

The empirical examples identify a number of channels for establishing and maintaining influence within the captor network (e.g. revolving doors, political financing and ideological influence) that are common across policy fields (Shaxson and Christensen, 2014). Brokers can pull together and maintain extensive tax-policy capture networks by interconnecting disparate actors and providing stable relationships for capture purposes (International Consortium of Investigative Journalists, 2015).

While the two major types of tax-policy capture targeting tax legislation or the tax authorities share common traits (and influence channels), they differ in terms of the transparency of capture and the corrupt deals that are brokered. Tax-policy capture deals are not transparent by default, either for the wider public or for other members of the captor network. By contrast, public procurement, energy-policy capture or tax-legislation capture typically involve key transactions that are transparent both to the wider public and the captor network. The lack of transparency in individual deals creates a need for strong trust and reliable brokers who maintain fair standards for the captor organisations. However, tax-policy capture and individual benefits are such that individual companies' rents are independent from each other, allowing for a loose, no necessarily co-ordinated, captor network to emerge.

The highly technical and complex nature of tax law creates a relatively wide berth for parliamentary and governmental discretion to insert loopholes

and preferential tax treatment. However, the decision-making processes and transparency of most tax regulations limit the scope for discretionary decisions. In the implementation of tax regulation, by contrast, the secrecy of individual tax deals creates wide room for discretionary decisions favouring specific companies or individuals. Tax authorities decide internally on whether to pursue or terminate a tax investigation; this makes public scrutiny more difficult, unless a whistle-blower comes forward with insider information. Tax-policy capture appears most stable when legislation works in tandem with tax-implementation capture. Moreover, the lack of a high-quality tax administration, built on meritocracy and staffed with skilled and dedicated bureaucrats, make capture more easy to establish and maintain (Grzymala-Busse, 2008).

Capture of energy policy

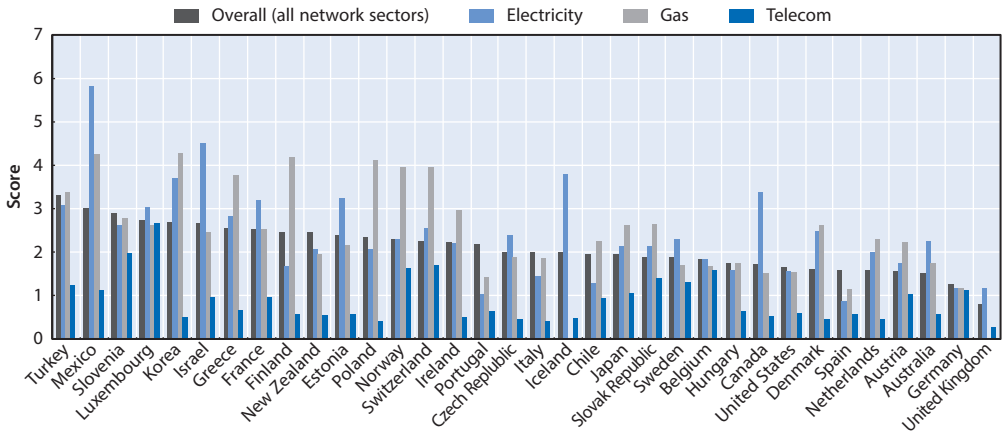
Energy policy concerns the regulation, generation, transmission and purchase of energy, including fossil-fuel extraction. Given that energy products (such as electricity or gas) are homogenous goods, the primary parameter for capture is the price paid by users to energy producers and transmitters. Despite their relative coherence and apparent interdependencies, energy policies tend to be organised along industry lines, e.g. renewables, nuclear, oil and gas, or coal (IEA/OECD, 2014). In addition, while closely related, the regulatory and institutional frameworks governing the exploration and extraction of energy resources are typically very different from those governing energy production, transfer and consumption. By implication, different parts of the energy landscape facilitate different types of capture.

Energy generation is a substantial component of GDP, accounting for 2-4% of GDP in European countries in 2012 (Eurostat). While this percentage only captures a fraction of economic activity in energy markets (e.g. it does not take into account the substantial income from extraction in resource-rich countries), it does indicate the vast volume of potential rents involved. Energy production is largely concentrated in a few facilities (such as nuclear power plants) and in the hands of a few large corporations, making the concentration and extraction of rents relatively easy to organise. As most energy products (such as electricity or gas) are uniformly priced within a country, even a small price advantage translates into large profits. The profits and stability of rent extraction are further underpinned by inelastic demand for electricity and (both household and industrial) heating.

The essential character of energy supply for modern economies (and most voters) means that regulating energy markets is a key concern for governments worldwide (IEA/OECD, 2014). In most OECD countries, energy markets are thus more regulated than other network industries, such as telecommunications (Figure 2.2). The combination of value and concentrated

rents with extensive government intervention in energy markets creates opportunities to abuse public resources through capture (Chang and Berdiev, 2011; van Koten and Ortmann, 2008).

Figure 2.2. **Regulation in network sectors (energy, transport and communications), 2012, OECD and OECD partner countries**



Source: OECD (n.d.), Indicators of Product Market Regulation Homepage, www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm#indicators.

Notes: All data is for 2013, except for the United States (2008).

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Capture of energy policies can target any one or a combination of the following benefits, depending on the capacity to capture public and private organisations, and the organisation of regulatory and supervisory powers. Capture targets can be state-owned enterprises involved in fossil-fuel extraction and energy generation or distribution. Capture can also modify prices to generate and extract rents under the guise of:

- preferential extraction rights and royalties (Portman, 2014)
- guaranteed prices for producers (Clemente, Sen and Jonker, 2011)
- special transfer, import or export rights (Magyari, 2015)
- preferential end-user prices (Boehm, 2007).

Depending on the size and governance structure of a given country's energy industry, high-level politicians can play diametrically different roles in capturing energy policies. On one extreme, the capture of energy industries (most importantly oil and gas extraction) is intimately intertwined with top-level politics, autocratic rule and the government apparatus. On the other extreme, politicians play a limited role in energy-policy capture when energy-market regulation is delegated to independent regulatory authorities, although politicians can still try to influence these agencies' decisions by curtailing (or threatening to curtail) their resources or exercising undue pressure on individuals. Interestingly, the crucial role of energy prices for citizens in most OECD countries and the concentration of suppliers in some countries, also create capture opportunities, where an energy-rich country captures domestic energy policies in a buyer country through a combination of personal corrupt deals and high-level political agreements (Yardley and Becker, 2014).

When energy-market regulation is delegated to a regulatory agency, the bureaucrats controlling it are key, given that they determine market access rights, prices and a range of other parameters of rents to be extracted. Some bureaucrats may be motivated to play an active part in capture, while others may simply be passive enablers by failing to counter it. The highly regulated nature of energy markets also create opportunities for capture without the active involvement of bureaucrats, simply by relying on hierarchical relationships and impersonal formulas. For example, if the companies receiving preferential electricity prices on justifiable grounds – e.g. their higher production costs from producing green energy – are stipulated by law, the bureaucratic organisation simply implements the policy. However, if the captor group can select the companies benefiting from the regulation at the legislative stage, capture is achieved at the top, while the bureaucracy automatically delivers corrupt rents.

Business executives can play different roles depending on which part of the supply chain their companies control, from natural-resource extraction to final energy consumption. State-owned enterprises holding key monopolies (such as transmission or extraction) in energy markets are at a particularly high risk of capture. The strategic nature of capture is fully evidenced when captured state-owned enterprises, and the gains achieved through them by powerful individuals, are used to further their beneficiaries' political careers.

Many high-profile scandals in the energy sector have highlighted the role of analysts, experts and academics in the capture process: because risk assessments or price calculations require highly specialised scientific expertise, co-opting key experts in a given energy field can greatly enhance the influence and stability of the capture network. The strategic use of biased scientific expertise to influence environmental regulations of energy generation is also common: in many countries, polluting energy companies fund biased research to underpin their business case, and lobby policy makers

at great expense to use the resulting evidence. Use of offshore companies, secret financial flow, and consultancy firms to channel bribes and rents are also common practices worldwide (U.S. Department of Justice, 2010).

Energy industries are run by influential people from similar educational and professional backgrounds, who have formed longstanding relationships with each other. While these relationships serve as channels for forming and maintaining captor networks. This is most frequently observed in policy fields with strong technical backgrounds spanning the public and private spheres. Energy companies hiring former politicians (the “revolving door”) or regulators bringing in industry experts are but a few of the frequently observed patterns of personal ties underpinning government favouritism (Dal Bó, 2006; Makkai and Braithwaite, 1992). Standard lobbying can also serve to introduce and maintain influence over key decisions on energy policy, e.g. through directly drafting energy laws (Cserpes et al., 2010) or dominating key expert groups (Greenpeace, 2015). State-owned enterprises that directly bridge politics and business represent a particularly frequent means to create captor networks – which can sometimes endure despite government changes. Controlling key positions in state-owned monopolies, and using the income earned to finance political contestation and strategic action on the part of the captor group, is one highly successful strategy (U.S. Department of Justice, 2010; Yakovlev, 2006).

In summary, the degrees of discretion differ in various sections of the energy business, just as the techniques for granting decision-making freedoms differ on the private or public sides. Nevertheless, the technically complex and global nature of energy markets makes it relative easy to hide favourable decisions under the guise of good policies.

References

- Anderson, S. (2014), “Tax Authorities Allege Tax Fraud by Penta Group”, *Santiago Times*.
- Associated Press (2013), “Tax Evasion ‘Rampant’ among India’s Wealthy”, *The National*.
- Boas, T., D. Hidalgo and N. Richardson (2014), “The Spoils of Victory: Campaign Donations and Government Contracts in Brazil”, *Journal of Politics*, Vol. 76(2), University of Chicago Press, Chicago, pp. 415-29.

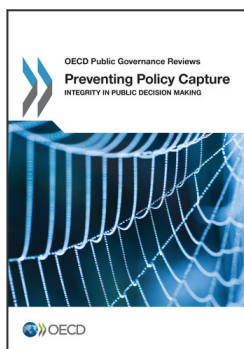
- Boehm, F. (2007), “Regulatory Capture Revisited – Lessons from Economics of Corruption”, *Internet Center for Corruption Research (ICGG) Working Paper*, No. #22, ICGG, Passau, Germany.
- Bromberg, D. (2014), “Can Vendors Buy Influence? The Relationship Between Campaign Contributions and Government Contracts”, *International Journal of Public Administration*, Vol. 37(9), Taylor & Francis Online, pp. 556–67.
- Cellan-Jones, R. (2014), “Apple’s Irish Tax Deal May Be State Aid, Says Europe”, *BBC News*, 30 September 2014.
- Chang, C.P. and A. Berdiev (2011), “The Political Economy of Energy Regulation in OECD Countries”, *Energy Economics*, Vol. 33(5), Elsevier, Amsterdam, pp. 816-25.
- Clemente, A., A. Sen, and L. Jonker (2011), “Retail Gasoline Price Ceilings and Regulatory Capture: Evidence from Canada”, *American Law and Economics Review*, Vol. 13(1), Oxford University Press, Oxford, pp. 532-64.
- Commission d’enquête sur l’octroi et la gestion des contrats publics dans l’industrie de la construction (2015), *Rapport final de la Commission d’enquête sur l’octroi et la gestion des contrats publics dans l’industrie de la construction (Commission Charbonneau)*, Gouvernement du Québec, Montréal.
- Cserpes, T. et al. (2010), *Kormányzati Kudarcok, Járadekvadászat És Korrupciós Kockázatok a Magyar Villamosenergia-Szektorban*, Budapest, http://energiakontrollprogram.hu/sites/energiakontrollprogram.hu/files/ekp_tanulmany_jaradekvadaszat-es-korrupcio.pdf.
- Dal Bó, E. (2006), “Regulatory Capture. A Review”, *Oxford Review of Economic Policy*, Vol. 22(2), Oxford University Press, Oxford, pp. 203-25.
- Dal Bó, E., P. Dal Bó and J. Snyder (2009), “Political Dynasties”, *The Review of Economic Studies*, Vol. 76(1), Institute for International Economic Studies, Stockholm University, Stockholm, pp. 115-42.
- Dal Bó, E. and R. DiTella (2003), “Capture by Threat”, *Journal of Political Economy*, Vol. 111(5), University of Chicago, Chicago, pp. 1123-1154.
- Eleftheriadis, P. (2014), “Misrule of the Few. How the Oligarchs Ruined Greece”, *Foreign Affairs*, Vol. 93(6), Council on Foreign Relations, New York, pp. 139-47.
- EUbusiness.com (2014), “EU accuses Netherlands on Starbucks tax deal”, 15 November 2014, www.EUbusiness.com.
- Fazekas, M. and I.J. Tóth (2014), “From Corruption to State Capture: A New Analytical Framework with Empirical Applications from Hungary”, *Political Research Quarterly*, Vol. 69(2), University of Utah, USA, pp. 320-334

- Fulmer, S. and A.M. Knill (2013), “Political Contributions and the Severity of Government Enforcement”, in *AFSA 2013 San Diego Meetings Paper*, American Finance Association, San Diego.
- Glaeser, E., J. Scheinkman and A. Shleifer (2003), “The Injustice of Inequality”, *Journal of Monetary Economics*, Vol. 50, Elsevier, Amsterdam, pp. 199–222.
- Gounev, P. and T. Bezlov (2010), *Examining the Links between Organised Crime and Corruption*, Center for the Study of Democracy, Sofia.
- Greenpeace (2015), *Smoke and Mirrors. How Europe’s Biggest Polluters Became Their Own Regulators*, Greenpeace European Unit, Brussels.
- Grzymala-Busse, A. (2008), Beyond Clientelism: Incumbent State Capture and State Formation, *Comparative Political Studies*, Vol. 41(4/5), Sage Publications, pp. 638-73.
- Helm, D. (2010), “Government failure, rent-seeking, and capture: the design of climate change policy”, *Oxford Review of Economic Policy*, Vol. 26 (2), Oxford University Press, Oxford, pp. 182-196.
- Hungarian Spectrum (2015), *Tax Fraud Scandal in Hungary*, Hungarian Spectrum, Connecticut, www.hungarianspectrum.org.
- Hyytinen, A., S. Lundberg and O. Toivanen (2008), “Politics and Procurement: Evidence from Cleaning Contracts”, *Helsinki Center of Economic Research (HECER) Discussion paper No. 233*, HECER, Helsinki.
- IEA/OECD (2014), *World Energy Outlook 2014*, IEA/OECD Publishing, Paris, <http://dx.doi.org/10.1787/weo-2014-en>.
- Innes, A. (2014), The Political Economy of State Capture in Central Europe, *Journal of Common Market Studies*, Vol. 52(1), Wiley, pp. 88-104.
- International Consortium of Investigative Journalists (2015), *Luxembourg Leaks: Global Companies’ Secrets Exposed. Key Findings*, International Consortium of Investigative Journalists, Washington, DC, www.icij.org/luxleaks/key-findings.
- Jancsics, D. and I. Jávör (2012), “Corrupt Governmental Networks”, *International Public Management Journal*, Vol. 15(1), Routledge, London, pp. 62-99.
- Kaufmann, D., J. Hellman and J. Geraint (2000), “Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition”, *Policy Research Working Paper*, No. 2444, World Bank, Washington, DC, <http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-2444>.

- Koske, I et al. (2016), “Regulatory management practices in OECD countries”, *OECD Economics Department Working Papers*, No. 1296, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5jm0qwm7825h-en>.
- Krauthamer, K. (2014), *China’s Oil Giant At Center Of Corruption Probe*, 22 May 2014, www.OilPrice.com.
- Lambsdorff, J.G. (2007), *The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy*, Cambridge University Press, Cambridge.
- Makkai, T. and J. Braithwaite (1992), “In and Out of the Revolving Door: Making Sense of Regulatory Capture”, *Journal of Public Policy*, Vol. 12(1), Cambridge University Press, Cambridge, pp. 61-78.
- Martimort, D. (1999), “The Life Cycle of Regulatory Agencies: Dynamic Capture and Transaction Costs”, *The Review of Economic Studies*, Vol. 66(4), Oxford University Press, Oxford, pp. 929-947.
- Nye, J.S. (1967), “Corruption and Political Development: A Cost-Benefit Analysis”, *The American Political Science Review*, Vol. 61(2), Cambridge University Press, Cambridge, pp. 417-27.
- OECD (2016a), “Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture”, *OECD Public Governance Reviews*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249455-en>.
- OECD (2016b), *Governance of Regulators’ Practices: Accountability, Transparency and Co-ordination*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255388-en>.
- OECD (2014a), *Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214224-en>.
- OECD (2014b), *Revenue Statistics 2014*, OECD Publishing, Paris, http://dx.doi.org/10.1787/rev_stats-2014-en-fr.
- OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264202719-en>.
- Piketty, T. (2014), *Capital in the Twenty-First Century*, Harvard University Press, Boston.
- Piketty, T. and E. Saez (2007), “How progressive is the U.S. federal tax system? A historical and international perspective”, *Journal of Economic Perspectives*, Vol. 21(1), American Economic Association, Pittsburgh, pp. 3-24.

- Portman, M.E. (2014), “Regulatory capture by default: Offshore exploratory drilling for oil and gas”, *Energy Policy*, Vol. 65, Elsevier, Amsterdam, pp. 37-47.
- Romero, S. (2014), “Oil Scandal Erupts Again as Brazilians Near Election”, *New York Times*.
- Rose-Ackerman, S. (1999), *Corruption and Government: Causes, Consequences, and Reform*, Cambridge University Press, Cambridge.
- Shaxson, N. and J. Christensen (2014), *The Finance Curse. How Oversized Financial Centres Attack Democracy and Corrupt Economies*, Tax Justice Network, Chesham, United Kingdom.
- Slinko, I., E. Yakovlev and E. Zhuravskaya (2004), “Effects of State Capture: Evidence from Russian Region”, in *Building a Trustworthy State in Post-Socialist Transition*, Palgrave Macmillan, New York, pp. 119-32.
- Solimano, A. (2014), *Economic Elites, Crises, and Democracy: Alternatives Beyond Neoliberal Capitalism*, Oxford University Press, Oxford.
- Szántó, Z., I.J. Tóth and S. Varga (2012), “The Social and Institutional Structure of Corruption: Some Typical Network Configurations of Corruption Transactions in Hungary”, in *Networks in Social Policy Problems*, Cambridge University Press, Cambridge.
- Tax Justice Network (2013), *Financial Secrecy Index 2013. Methodology*, Tax Justice Network, Chesham, United Kingdom.
- Thatcher, M. (2002), “Regulation after Delegation: Independent Regulatory Agencies in Europe”, *Journal of European Public Policy*, Vol. 9(6), pp. 954-72.
- The Economist (2013), “Swiss Banks and Tax Evasion. Arresting Developments”, *The Economist*.
- U.S. Department of Justice (2010), ABB Ltd and Two Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Will Pay \$19 Million in Criminal Penalties, U.S. Department of Justice, 10-1096, 29 September 2010, Updated 15 September 2014, Criminal Division, Washington, DC.
- Van Koten, S. and A. Ortmann (2008), “The Unbundling Regime for Electricity Utilities in the EU: A Case of Legislative and Regulatory Capture?”, *Energy Economics*, Vol. 30(6), Elsevier, Amsterdam, pp. 3128-40.
- Warren, M.E. (2003), “What Does Corruption Mean in a Democracy?”, *American Journal of Political Science*, Vol. 48(2), Wiley-Blackwell Publishing, pp. 328-43.

- Wedel, J.R. (2012), “Rethinking Corruption in an Age of Ambiguity”, *Annual Review of Law and Social Science*, Vol. 8, Palo Alto, California, pp. 453-98.
- Wedel, J.R. (2003), “Clans, Cliques and Captured States: Rethinking ‘transition’ in Central and Eastern Europe and the Former Soviet Union”, *Journal of International Development*, Vol. 15(4), Wiley Online Library, pp. 427-40.
- Yakovlev, A. (2006), “The Evolution of Business – State Interaction in Russia: From State Capture to Business Capture?”, *Europe-Asia Studies*, Vol. 58(7), Routledge, London, pp. 1033-56.
- Yardley, J. and J. Becker (2014), “How Putin Forged a Pipeline Deal That Derailed”, 30 December 2014, *New York Times*.



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