

IS A NEW EUROPEAN UNION ENERGY POLICY NEEDED?

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Abstract:

In January 2009, because of a different between Russia and Ukraine, a major natural gas pipeline was closed, this being the worst gas cut-off of the decade. Eighteen countries have been interrupted from gas supplies and countries which had limited reserves and a shortage of alternative supply met a serious energy deficit, in the middle of an especially cold winter. After 22 days, the gas flows to all European countries were back to the normal level. A result of this, and of another similar dispute from 2006, was that the EU has put into question the confidence on the Russian gas supplies. The insecurity has led to a renewal of the political interest in energy security on EU level. The Russian cut-offs have been like a wake-up call to policy makers at a time when the EU faces significant energy security challenges as a result of the emerging world order. More than half of its energy, the EU buys from non-EU sources, while the demand for energy is always higher. In the meantime, the EU production levels of hydrocarbons are decreasing, leading to higher dependency on non-EU sources. Thereby, the energy security became a globally important topic and will raise important challenges for the EU in the future.

Keywords: energy policy, reserves, EU, security, challenges

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1. EU's External Energy Policy- Market Governance Approach

In the beginning it is important to highlight the legal basis of the EU's Energy policy. Article 194(1) of the Lisbon Treaty sets out four main aims of the EU's energy policy:

- to ensure the functioning of the energy market;
- to ensure the security of supply in the Union;
- to promote energy efficiency and energy saving, and develop new and renewable forms of energy;
- to promote the interconnection of energy networks.

While the above are to be shared competences, Article 194(2) and (3) gives member states full competence over exploitation of energy resources, choices and structure of its energy supply and energy taxation. Therefore within energy policy the EU has a limited responsibility. In terms of responsibility for energy security, the EU has a legal basis to act on promoting the EU's Single Market in energy internally as well as externally, promoting internal and external interconnection of energy networks and working towards the security of supply in the Union. Therefore the EU has legitimacy to proceed within a market-governance approach to external energy policy, however cannot proceed more geopolitically. Within this policy exporting EU Single Market norms and promoting interconnectivity within the EU's sphere of influence are its core aims. These goals are to be achieved through solidarity as highlighted in Article 122 which states that "the Council, on a proposal from the Commission, may decide, in a spirit of solidarity among member-states, upon the measures appropriate [...] if severe difficulties arise in the supply of certain products, notably in the area of energy." Even if this presents the EU with an opportunity, solidarity in the field of energy is remaining weak.

The EU's external energy policy is multi-faceted and is comprised of bilateral, regional and international agreements and policies. The EU had begun to work extensively towards achieving its goals through this approach even before the increased legitimacy in the field post-Lisbon. The Commission argues that energy security can be achieved "by the EU extending its own energy market to include its neighbours within a common regulatory area with shared trade, transit and environmental rules". The EU needs "to convince non-

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EU consumer countries that world energy markets can work for them. If they were to conclude that the only route to security lay in bilateral deals, the risk of disruption of the energy system would grow”.

This is more than a simple market-based model, as it does not only propose to attain energy security through free market economics but rather it intends to transfer EU norms and aquis to third countries.

2. EU's Single Market for Energy

The Internal Single Market for Energy has been a long-term project of the European Union, which started in the middle of the '90s. The first two Energy Packages implied opening and liberalising the electricity and gas market, forming mandatory independent national regulators, growing competition, and improving the transparency and the service quality. Considerable advances in the process of integration have been made and from the late 2000s the consumers had more options to choose between the energy providers, affordable prices despite higher oil prices and better services have been seen in the EU. An important obstacle for the liberalisation was the exclusive control of the transport networks by the big energy producers, which excluded the market access for the competitors. The Third Energy Package (TEP) solved the problem dividing supply and production activities from the transmission and distribution systems (so named Ownership Unbundling), which the member states have to implement until October 31st, 2014. The Commission (2012) has put forward the Single Market Act II, which proposes to “Improve the implementation and enforcement of the TEP” and improve integration of energy markets and diminution of physical barriers between the member countries. Thus, internally the EU is moving to increasingly integrated and liberalised markets, a model it intends to export to external partners.

Fundamental doubts however still exist over single market energy norms. If the internal market is supposed to settle the foundations for the rule-based, market-oriented external energy policy a comprehensive and united single market needs to be in place. In 2006, the Commission has criticised all the governments, with the exception of the Dutch one, for failing to meet market opening commitments they had signed up to. Further, member states had until March 1st 2011 to transpose the TEP, which Bulgaria, Estonia and the UK have yet to complete and have thus been referred to the European Court of Justice. Besides, high-profile cases, such as Spain's hindrance of EON's bid for Endesa, have made some analysts to argue about Europe going back to energy nationalism. Moreover basic infrastructure connections still are quite absent between the member states, this having direct implications in the external strategy; the absence of both pan-European market mechanisms and sufficient physical interconnection obstructs the EU from replying as a single entity to external energy shocks.

The most institutionalised and likely most complete tool at the EU's disposition is the European Energy Community, which pursues to create a “common regulatory space around Europe” (Commission, 2006a:16). The treaty defines the tasks of the Energy Community as the achievement of a stable regulatory and market framework, realizing a single regulatory space for trade in network energy, increasing the security of supply and providing the regulatory environment for connections to Caspian, North African and Middle East gas reserves, raising the environmental standards, and developing market completion.

From the beginning, it is not easy for the EU to export its energy norms to the third-countries, as the project is being a work in progress at home. The EU had limited success in the form of the European Energy Community, still was not so successful in the cases of North Africa (particularly Algeria) and of Russia.

The market governance approach though has been undermined by individual member state's geopolitical approaches to energy security. This conflict between a market and

geopolitical approach can also be seen in the relationship with Russia, where more and more members have confessed their concerns. Fissures between member states and between the Council and the Commission have appeared. Commissioner Ferrero-Waldner (2006) argues, “EU external energy policy [should] be based on a single approach and speaking with a single voice”. Opposite to this, Lithuanian President Valdas Adamkus, and other member states, have argued that while Russia has insisted on approaching energy in such an overtly geopolitical manner, the EU needed to respond in the same way. The politics of creating a single EU external energy policy can thus be described as a conflict between markets and geopolitics. It has been shown that at the European Union level exists a conflict between markets and geopolitics, that the EU is fragmented internally and in its treats with third countries. Therefore it is important to understand the member state level in order to understand why the EU is so fragmented.

3. Dependence on Russia and Geopolitics

Within this group, some countries in particular the Baltics and CEEC have historically been dependent on Russia, and as the alternative infrastructure was difficult, it was difficult to diversify their energy sources, though the TEP has made efforts towards increased integration. Germany has considered Russia as a long-term partner and has used long-term contracts, joint long-term investments and good political relations in order to reach energy security through a geopolitical approach.

As for the Central Europe and Baltic Countries, more than forty cut-offs of energy supplies have occurred against the Baltic and CIS countries since 1991. Moreover, on at least three occasions serious threats have been issued but no action has been taken.

With the Baltic countries being under pressure from Russia, totally dependent on Russian Gas and Gazprom being the only Gas supplier, the Baltics face availability and affordability preoccupations. Looking at the REES index, we see that Lithuania (20.1), Latvia (21.0) and Estonia (10.3) have high REES indices, with Lithuania posing limited, but in comparison to Estonia and Latvia the highest risk to overall European supply risk at 4%. Still, although Russia has benefited historically from the liberalization and environmental policies of the EU in regard to the Baltics and CEEC, the TEP in particular has allowed member states to reduce the dominance of Gazprom in their energy sectors.

As for Poland, its EU membership is a significant factor, Poland having successfully solved bilateral disputes to the EU level. An example is that Poland was able to delay negotiations of a new EU-Russia Partnership and Cooperation Agreements with several months following a Polish-Russian dispute over Poland’s meat exports to Russia. Commission President José Manuel Barroso stated that “a Polish problem is a European problem”, as the EU was “based on principles of solidarity”. However as seen in the Baltics and in other examples, this solidarity has rarely been seen towards Russia. As long as a common and effective EU energy policy for diversification of gas in particular for the Eastern members, is not in place, these countries have little choice but to accept the Russian prices.

Russia has not aimed cut-off at Western states as is known, but issues of concern exist, especially as these countries are affected by Russia’s policy towards transit countries. Within the high and medium category, Germany is the most important country with a high REES (5,5) and CERE (11%) index because of its relative importance for the EU economy, politics and high gas imports. Hence it cannot be discussed EU energy policy without discussing German energy security. This section will concentrate on the relationship between Germany and Russia to emphasize that Russian policy is quite different towards Germany than towards the Baltic countries and CEEC or other Western European countries.

Germany receives a preferential treatment from Russia, but Germany has also blocked increased EU integration and liberalization, and has allowed firms to block efforts

to increasingly build cross-border infrastructure. In the meantime, Central and Eastern countries and in particular the Baltics have experienced a different relationship with Russia, one characterised by markets dominated by Gazprom, informal connections between business and government and Russian Gazprom and government. Russia understands the dynamics within the EU and has set about to benefit of the largest and most significant actor of the EU, while working against EU norms and competition law in, especially Eastern states. While Large, wealthier Western states such as Germany, Italy, France and Austria have well developed energy firms with enough technical and financial resources and indeed political support. To the East however, firms are not so well established and Russia has more leverage over them. Germany, has demonstrated that it can stand up to Russia and has shown a willingness to criticise Russian policies. Generally speaking, as long as the EU does not have a single voice regarding Russia, it will not be able to build on its mutual dependency on Russia.

Conclusions

The primordial EU external energy policy differs between regions, thus overall the EU doesn't present a coherent policy towards energy security. Its policy, overall remains weak, insufficiently funded, fragmented and individual member states geopolitical actions have undermined its success. Examining the European Energy Community we can see that the EU has been able to transfer its own aquis to third countries; yet progress is slow and restricted to those countries which the EU can attract through accession conditionality. In the case of North Africa (especially Algeria) and Russia, the EU had the least success in exporting its norms. Most importantly however, the premise of having a coherent and well established single energy market has not yet been accomplished and consequently the project of exporting its norms is severely undermined. Before achieving a coherent Energy Policy, internally as well as externally, member states have to agree on a mixed approach to energy security; an approach that is based not only on the markets, as it is nowadays, but also on geopolitics.

The necessity for such a dual approach comes from the different energy security risks the EU's member states face in present. The EU is divided into CEEC, which are predominantly the medium to high energy security risk states as of their dependency on the Russian gas and weak negotiating power; Germany which has a preferential relationship with Russia and the countries in the low to medium category that receive most of their resources from indigenous supply, EU/Norway sources or through LNG (Liquefied Natural Gas). Having shown that the EU's indigenous supply is poor, countries in the latter category will increasingly need to derive their gas sources from different supplies, which will present a further challenge for the EU. By highlighting Spain's success in diversifying its imports through LNG, this is a possible solution to the EU, although issues with supply may be an issue in the future due to increased global demand.

Although we agree the EU and Russia are mutually dependent, the incoherence of EU policy towards Russia, the fragmentation of policies – particularly the conflict between German policies and Eastern European policies towards Russia – have weakened the mutual dependency and have let Russia achieve the position of the dominant partner, with the EU being uneasy to confront it.

There is a conflict between a market-based approach and geopolitics; the Eastern members, who have been under pressure from Russia and are seeking for a better EU involvement and Germany which has been thankful with its geopolitical approach; an EU market-governance approach and geopolitical relationships; the Commission and member states who do not wish to upload more sovereignty or to increasingly liberalise their markets; and between Russia's geopolitical approach and the EU's market-governance approach.

Before the European Union can become a coherent energy actor, it needs to have a consensus between all the member countries and in particular it has to act with a single voice towards Russia. In order for this to be achieved the EU has to be given more responsibility and thereby the treaty base has to be strengthened. As shown the EU now only has legitimacy to act through a market-governance approach, but to successfully convert its mutual dependency with Russia, it has to add a geopolitical component.

The first priority is to achieve a single voice vis-à-vis Russia. Especially the situation of the Eastern states would be strengthened by this, though all countries would benefit, especially in the future when EU supplies will be exhausted. The EU has a strong negotiating position towards Russia as a result of their mutual dependency and should take advantage of it. Second, the EU needs to fully implement the single market for the external element to work in a coherent manner.

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