Relations and Prospects for Development of Security and Solidarity Policy on the European Gas Market

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The process of development of common energy policy of the European Union (EU), including the aspect of energy security and solidarity, is not close to completion yet. Despite the legal basis for creation of such policy being expressed in Article 194 TFEU (Treaty on the Functioning of the European Union), what is lacking at the current stage of integration, especially among the EU's largest member states, is political will. The lack of common position among member states as regards for instance security of gas supply to the EU or external policy in general seriously hinders the development process of consistent common policy at the EU level in the area of energy security and solidarity. With the above taken into account, creation of a common gas market based upon free trade of goods (free movement of gas) between member states and free access to infrastructure for all (suppliers) may enable the EU countries to possess comparable energy mixes and import dependencies in addition to similar interests and expectations as regards common energy policy in the area of energy security and energy solidarity.

Keywords: solidarity, security, energy policy, gas market, liberalization, geopolitics

The need to establish a common energy policy capable of providing guarantees for both energy security (security of supply) and energy solidarity among member states stems from provisions of the treaties establishing the European Union (EU). However, not a single effective common energy policy emerged over the initial years of European integration (i.e., the 50s or 60s), nor did any binding legislation in this area (Hassan & Duncan, 1994, p. 164). Still, it is important to note that as early as the mid-60s European energy policy ranked among the most intensely discussed subjects in the community forum, mainly within the context of oil.

Accordingly, it was quite a typical phenomenon over the past decades, until the mid-80s, that the energy sector and gas in particular was dominated by public monopolies strongly dependent upon state regulation and control and therefore very resistant to change. Facing this situation, it was hardly surprising that actions undertaken by the European Commission until the mid-90s with the intention to develop common energy policy, in particular within the context of the gas market, one that would promote energy solidarity among member states including security of supply to the EU, brought no significant progress in that field (Cameron, 2002, p. 39). It is not an exaggeration to say that for many years, application of provisions of the European Community Treaty (EC Treaty) concerning the energy industry, and gas in particular did not exist in reality. As a result, the principal role in regulating the energy sector was taken by national legislation, thus pushing the

community law to a second plan. According to some researchers, the lack of progress in the area of creation of a common energy policy was also influenced to a certain degree by a lack of a specific chapter in the EC Treaty dedicated to issues of energy (Swann, 1988, p. 242; Cross, 2007, p. 225). This was despite proposals being submitted to include energy policy in the Single European Act (SEA) or to the Treaty on the European Union, Treaty of Maastricht. Nevertheless, even within the doctrine, there are opinions opposed to the view that creation, at that time, of a separate chapter in the EC Treaty dedicated to the energy sector could have overcome or remedied the problems related to the development of a common energy policy in the EU (Rashbrooke, 2004, pp. 375-377). However, there was little support given by member states for the introduction of a new chapter on energy that reflected their obvious motivation, manifested at national level, to maintain as great control as possible over the energy sector. Furthermore, even in the European Commission, the key propagator of energy market liberalization of the opinions as to whether it was advisable to add a new chapter to EC Treaty was highly divided. Those favoring such a solution pointed out that this would equip the commission with additional powers to carry out necessary legal actions for the development of a common energy market and policy. On the other hand, experts in the field of competition law argued that the fundamental treaty principles were lucid enough, so there was no need to supplement them with another separate chapter dealing with energy (Ehlermann, 1994, pp. 346-347).

It was only recently that the Constitution Treaty¹ was provided with a new opportunity to seriously reconsider the idea of a separate energy-related chapter as part of the fundamental treaty. However, according to some researchers (Hancher, 2005, p. 4; Haghighi, 2008), even the introduction of a dedicated chapter on energy to the new constitution for Europe in effect to the Treaty of Lisbon (Treaty on the Functioning of the European Union—TFEU) fails to solve all the legal problems surrounding the issue of the commission's powers to address energy-related issues including security of supply of individual states. On the other hand, however, creation of a chapter concerning energy in the TFEU or more specifically, Article 194 TFEU, provides a legal basis for development of a common energy policy in the spirit of solidarity among member states. The aim of which is, among others, provision of security of supplies to the EU (Kurze, 2010, p. 5).

Moreover, a new chapter of the treaty, dedicated to energy matters, indirectly strengthens the role played by the European Commission as an initiator of legislative changes in national energy markets. However, it would also require the will to change on the part of individual states, rather than solely the legal base, for the process to be successful. Unless such good will, including mainly political will, is truly manifested, the present energy-related treaty Article may, unfortunately, remain a non-implemented declaration. Indeed, the lack of such political will may inactivate even the most ambitious and weighty legislative drafts. Unfortunately, the will to implement depends largely on the geopolitical conditions of member states regarding energy sources.

With the above taken into account, the aim of this paper is to address the ongoing question: Whether the energy policy of the EU covering aspects of energy security (security of supply) and energy solidarity especially with regard to natural gas, can be realized in practice?

Geopolitical Background of the EU Energy Security—Gas Market as an Example

Geopolitical conditions concerning energy security in terms of diversification of sources from which energy carriers are derived, shall be seen from the perspective of the EU as a whole or from that of the common

¹ See Article 176. A concerning the energy industry in the treaty establishing a Constitution for Europe signed in Rome on October 29, 2004—never entered into force—treaty establishing a Constitution for Europe (OJ C310/1 from 16.12.2004).

energy market, especially in relation to supplies of gas. The common market does offer the possibilities of diversification of energy sources due to both closer integration and cooperation of national gas markets. Therefore, the advantage of the integrated market lies with a greater strength and bargaining position of the EU energy businesses which ensure sources of energy on global markets which result in better choice of supply routes and easier access to end users. This is particularly important within the context of the EU's (especially new members) strong dependence on a single gas supplier. While in 2001, supplies from abroad covered 31% of the EU's demand for natural gas, by 2025, it is estimated that the EU's needs for the import of gas will increase to roughly 60% of consumption (Cornwall, 2006, p. 45). Furthermore, competitive markets, which constitute the aim of the energy market liberalization, favor the goal of diversification since they are capable of reacting more flexibly to any changes of supply and demand in global markets (Nowak, 2010a, p. 30). However, one serious problem which complicates the efficient operation of an integrated European gas market is that of cross-border connections and the lack of adequate liquefied natural gas (LNG) infrastructure in countries having access to seas. Yet, having such infrastructure in place would be equal to freeing a given country and the entire EU from dependence upon a single supplier. Apart from this technological issue, there is another fundamental problem of the lack of common position developed among member states in relation to gas supplies from outside the EU, which seriously handicaps the potential for creating consistent energy policy, especially in terms of external relations at the union level. Several EU countries have been involved in negotiating the long-term contracts, in most cases with incumbent upstream suppliers. In reality, these countries appear to be motivated by their national political considerations rather than by concern for the security of supplies as seen from a pan-European perspective. Another point is that the problems of energy security are not seen as the basis of the Community's Common Foreign and Security Policy. Riedel (2010, p. 12) indicated that many proposals for deepening cooperation in this field are met with profound skepticism by certain member states, often creating or aggravating existing divisions among them. It is paradoxical that the EU, whilst being in charge of foreign policy from the outset, has not even one binding document to date specifying its entire foreign policy, including that relating to energy security or to the broad foreign dimension of energy policy. As emphasized in the Solana report², the EU has to face some of its old unsolved challenges recurring in both augmented form and newly emerging ones, such as energy security or climate change. This requires a search for consistent and effective solutions on a European scale. It is within this context that the second strategic energy review, in the form of a Communication from the Commission to the European Parliament and the Council on the EU energy security and solidarity action plan COM (2008) 781, mentions an increased emphasis on energy-related issues in international relations as one of the EU's five priorities for the area of energy. From new member's perspective, it is a declaration on regulating energy relations with Russia. This seems noteworthy, although inevitably a difficult challenge of division among member states as regards their relations with Russia. Another document that notes the importance of relations with Russia, the EU's largest trade partner in gas, is the Communication from the Commission on security of energy supply and international cooperation, "The EU Energy Policy: Engaging With Partners Beyond Our Borders". This document highlights the EU's foreign energy policy, having crucial importance for the creation of an internal energy market. Yet,

² A report resented by the EU's High Representative for Common Foreign and Security Policy, Javier Solana on the implementation of the Common Foreign and Security Policy. The document, entitled "Providing Security in a Changing World" was accepted by the European Council in December 2008. The report evaluates implementation of the European Security Strategy of 2003, also including proposals aimed at improvement of its implementation and its enrichment with some advisable points.

the author of the study does not agree with this statement, considering that it is the common internal energy market that is going to determine the development of an external energy policy, rather than *vice versa*. The common liberalized market acts as a guarantor of free trade within the union in energy products, including gas. Free trade in gas among member states and free access to infrastructure for all sellers (suppliers) should gradually eliminate member states' various dependencies upon imports and encourage them to have similar interests in terms of an external energy policy. However, in order to achieve this objective, free trade in gas products between member states shall be allowed. In fact, it should be noted that exports in the gas sector have been dependent on the extracted source of the energy carrier. At present, only two European countries, Norway and Russia, possess ample gas resources, enabling them to export and neither of them is an EU member state. All 28 member states of the present EU have to import gas. Trade between member states, while possible, is in practice restricted by the structure of national markets that are protected by dominant entities. Gas monopolies, existing in almost all EU member states, largely preclude independent players from entering their national gas markets. Furthermore, contracts signed by EU countries (and more specifically, by their energy enterprises) with other global upstream suppliers, especially with Gazprom, still include prohibition of resale of Russian gas by national gas trading companies to other member states of the EU. These actions violate one of the fundamental freedoms in EU economic law, the rule of free movement of goods within the union. Perhaps this will change in the foreseeable future, but it will require collective action by the EU countries in conjunction with their other partners. An example which shows that change may be forthcoming can be found in the contract signed by the European Commission with an Algerian state owned gas company Sonatrach which waives destination clauses and enables all EU based traders to resale Algerian gas within the EU³.

With the above considerations taken into account, a broader context of relations with Russia should include for example, a plan for negotiating a complex agreement as a solid legal basis which would ensure cooperation in the area of energy, to replace the partnership and cooperation agreement of 1997. This is tricky under present conflict between Russia and Ukraine, however important. Russia will remain the EU's key partner in the field of energy for a long time to come. Accordingly, efforts should be made in order to develop proper economic relations with Russia within the gas sector. Consolidation of crucial principles, upon which the partnership between the EU and Russia could be founded, that is in one legal act would be of advantage to both parties. Bearing this in mind, negotiations concerning a new agreement between the EU and Russia could cover a number of pivotal issues including: access to energy resources, access to transit networks and export markets, protection of investments, prevention of crises, provision of equal conditions of operation and specification of prices for energy resources. It is also necessary to provide for the predictability of transport of Russian gas to the EU and to clarify the principles with which Russian gas companies could make investments in energy-related activities in the EU. Most importantly, such an agreement with Russia needs to contribute to the development of binding and effective provisions concerning the resale of Russian gas by all European businesses inside the EU which is lacking to date.

Taking into account the need to create a new agreement between the EU and Russia, one should remember that since natural gas was perceived as an instrument for exerting political pressure, European gas security was

³ On July 9, 2007, Algeria and the EU finalized an agreement dealing with territorial restrictions, allowing companies of EU member states that import Algerian gas, the right to resell it either within their own domestic markets or to third party countries. For more, see: Waktare, E. (2007). Territorial restrictions and profit sharing mechanisms in the gas sector. The Algerian case. *Competition Policy Newsletter*, 3, 19-21.

put in jeopardy. Indeed, the EU has recently found itself in quite a complex situation because of this. The lack of solidarity or common policy toward external partners at the union level gives external suppliers better opportunities for negotiating long term contracts for gas supplies with individual EU member states. Unfortunately, it appears that the EU is responsible for this, at least to some extent. It was a mistake, in author's estimation, following the conclusion of the Energy Charter Treaty, to allow the EU's momentum in pursuing proper back-up in the gas sector and that of energy-related negotiations with Russia in the late 90s to deteriorate. During that period, prices paid for gas were relatively low and Russia was greatly in need of an inflow of foreign investment (Nowak, 2004, p. 63). This constituted a perfect opportunity for EU sited gas companies to secure their interests in the field of supply and to begin cooperation with state-owned Russian enterprises. Presently, with the high price of gas (which largely results from the high price of oil), demand increases constantly. This enables Russia to either develop its technologies independently or buy the same from "independent" contractors, without diminishing its resources for the benefit of foreign businesses. In effect, the future of international agreements, such as the Energy Charter Treaty, obliging states-parties which ratified it, to open their energy markets to foreign companies, seems rather bleak, at least while prices of gas in EU remain high. For Russian authorities who refused to ratify the Energy Charter Treaty, the main obstacle has been the Energy Charter Protocol regarding transit, in which the access to transmission infrastructure takes place in line with internal tariffs. Ratification of the treaty by Russia would also enable such countries as Azerbaijan, Georgia, Kazakhstan, or Turkmenistan, which have already ratified the treaty, to transport oil and gas to the EU via Russian transit networks on the same conditions as those enjoyed by Russian businesses. Therefore, Russia is concerned that ratification of the treaty could increase the role of Central Asian countries in international trade in energy carriers. This could result in the weakening of Russia's control over their transit to the EU and in decreasing the influence and predominance Russia has in that region (Nowak, 2010b, p. 60). Considering the strong position of Russia in the raw materials market and their use as an element of foreign policy, it seems that the need to develop common policy regarding solidarity and security of gas supply to the EU has become, at the present stage of European integration, the issue of crucial importance.

Issues of supply security and energy solidarity are at the forefront of debate in Central and Eastern European (CEE) countries. The sensitive geo-political situation of these CEE countries coupled by a strong dependence on Russian energy carriers (gas and oil) is additionally complicated by the fact that Russia largely, and especially in the case of Baltic states, views that part of the EU as the former zone of its influence. However, being dependent on just a single supplier is not by choice of the CEE countries. Rather, it is a burden and consequence of having "inherited" from the previous Soviet block the infrastructural network whose supplier sources were situated on the territory of the former Soviet Union. Transit gas pipelines such as Yamal or Brotherhood, which transport gas from the East toward the West that is from Russia to other European countries, clearly indicate the supplier. This way, the inherited infrastructure precisely defines the direction in which gas transit takes place, especially for CEE countries. Therefore, the clause concerning energy solidarity in the case of a crisis of energy carriers' supply (as expressed in Regulation No. 994/2010/EU) is perceived by leaders of CEE countries as an instrument of protection against Russia's ambitions. Additionally, new EU member states are much more dependent on Russia as the one source of gas supply than older member states. This, in turn, determines a different approach to relations with Russia as the EU strategic partner in gas trade. Historically, relations between Russia and CEE countries were fundamentally complex. This can be seen in Russia's present policy toward the Baltic states or Ukraine which has had a negative influence upon the way the

new EU member states perceive Russia as the EU's principal trading partner in gas. Russia is seen as benefitting from its position and its access to energy carriers and seemingly interested in using gas as a political weapon in its relations with neighboring countries (Nowak, 2012, p. 102).

It appears, however, that the fears of new member states are not entirely appreciated or taken into account by old EU members, which is especially true for Italy, Spain, Germany, and France. For these countries, import of gas from Russia accounts for only 20%-30% of entire imports, while in new member states, this amounts to as much as 60%-100%. This difference is quite understandable, considering relatively advanced projects of gas connections between Southern and Western Europe with countries of Africa. Already existing gas pipelines, such as Green Stream (Libya-Italy), Trans-Mediterranean (Algeria-Italy), Maghreb-Europe (Algeria-Spain and Portugal) are in the process of being supplemented by, among others, gas pipelines Medgaz (Algeria-Spain), Galsi (Algeria-Italy) and Trans-Saharan connecting rich deposits in Nigeria with existing transit gas pipelines in Algeria and toward Europe. The opening of the latter one has been announced to take place in 2015.

Strict cooperation between Germany and Russia in gas-related issues is hardly acceptable to Poland and to Baltic states, who fear renewed Russian domination in the region. In effect, the matter of supply security became even more contentious, following the German Government's decision to strengthen relations with Russia by forming a consortium responsible for construction of the Nord Stream pipeline running around the bottom of the Baltic Sea. The project, until recently was perceived as offensive by political decision-makers from CEE countries and termed an egoistic solution to the problem faced by the entire union. In fact, Poland, which was bypassed by the Nord Stream, views this project as a threat to its energy security, as often shown in opinions given by Polish politicians. Some scholars, however, argue that the construction of the Nord Stream pipeline will undermine the idea of energy solidarity and become an obstacle to the creation of a common external energy policy at the union level (Wyciszkiewicz, 2007). However, the reality of such a prospect is diminishing, as the Nord Stream project is increasingly perceived by EU institutions as an investment of strategic importance for European energy security.

From Poland's perspective, the most negative aspect of construction of the Nord Stream gas pipeline is in the fact that Poland will suffer serious losses with respect to its position as a transit country; the status upon which it has relied in its policy of negotiating prices of energy carriers with its Russian partner. Moreover, if and when the operation of Nord Stream is finally fully operational, it can be expected that a gradual limitation of gas transit will occur via the Yamal gas pipeline to Germany with a redirection into the Nord Stream. Such a solution will cause negative consequences for Poland. It appears that if this becomes reality, Poland will face little choice but prompt completion of the LNG terminal, which will partly diversify supply sources and directions.

In conclusion, new EU member states, even though similarly dependent on energy supplies as the older ones, face different challenges stemming from their proximity to and relationship with the EU's principal gas partner Russia. Important differences can be seen in several areas that of: the structure of energy consumption, energy dependence, development of infrastructure, and the politicization of the issue. The first noteworthy difference between the energy situation of new versus old member states of the EU concerns the fact that the former have a much higher level of dependence on a single source for energy in Russia than the latter. While in the older countries, the level of dependency on a single source of energy barely exceeds 30%, the level of energy dependency by the new countries on Russian gas oscillates between 60% and 100%. The difference between Eastern and Western Europe is further marked with disparity concerning the effectiveness and quality of infrastructure and facilities and the role energy plays in politics. The legacy of strained relations with the

former Soviet Union makes it very difficult to operate trade exchange with Russia as if it was trade with any other country. For new member states, both mistrust and fear damage the perception of their relationship with their crucial gas supplier which is an element not present in the relationship between old member states and their suppliers, whether it is Norway or Algeria. Additionally, the role energy plays in politics and the disparity in the relationship with Russia among the EU countries in general makes the whole process of creating external energy policy even more demanding. For example, relations between the UK and Russia are more likely to involve conflicts than in the case of Germany, Italy, or France. This became especially evident when the British Government declared itself decisively against Gazprom entering the British market through the purchase of assets in Centrica. A similar model of relations can be observed between Russia and Poland, the latter driven by concerns for its energy security, repeatedly blocked Gazprom's attempts to acquire assets in Polish energy companies.

Security and Solidarity in the Treaty on the Functioning of the EU as a Fundamental of the EU Common Energy Policy

With the Treaty of Lisbon, the TFEU made in reaction to the failure of the Constitutional Treaty, the idea progressed of creating a common energy policy at the EU level in the spirit of solidarity and with energy carriers supply security to member states properly ensured.

However, the TFEU, apart from direct reference to energy solidarity and security of supply introduces another fundamental change. The energy industry has been recognized as one of over a dozen key areas in which the union shares its scope of powers with member states (Article 4 TFEU). Inclusion of the energy industry in TFEU as an area of shared competence may be perceived, with the evident reluctant attitude of member states toward changes in the energy sector and their loss of some powers in that area, as an attempt to provide for a special mode of cooperation in that field between the EU and governments of individual member states. This is not only in the interest of greater transparency in energy markets, but most of all in the creation of effective common energy policy, including the gas market. Of course, this is not meant to imply that member states are deprived of any control over energy resources or over the issue of supply in terms of energy carriers. On the contrary, these issues constitute a domain of member states in which potential decisions at the European level require unanimity pursuant to Article 192(2c) TFEU.

The above effectively means that, for example, potential block purchase of gas by the EU (one of postulates submitted by Poland and other states during the present Russian-Ukraine crisis) from third countries would require unanimity among member states. This issue concerns the choice (adoption of measures which seriously determine the choice) between various energy sources and the general structure of a country's supply in energy, where unanimity is essential. In reality, it is difficult to expect such unanimity to occur, as for example, within the context of the price for gas. This makes the joint purchase of gas rather unlikely at present stage of integration. Theoretically, the purchase of gas by the EU might belong within the EU's scope of exclusive competence, the common commercial policy, Article 3(1) TFEU, and as such would be subject to the qualified majority procedure in the council where it is easier for a common position to be achieved. However, such a solution seems to be in contradiction to the fact that the energy industry as such constitutes a field of shared competence, according to Article 4(2) TFEU, where the union and its member states may jointly conclude an international contract: such contracts having a status of mixed agreements. This implies, in principle, necessity both to complete the procedure of the union obligating itself to such an agreement and its

approval by its parties (member states) in line with their own ratification requirements (Barcz, 2012, p. 320).

It is apposite at this juncture to question whether, in a situation where it is for member states to decide about choices between various energy sources and the general structure of energy supply, as to whether this may influence the process of the development of a common energy policy and affect it negatively. Such negativity may be experienced. However, to minimize these threats is the very essence of a common market of gas, upon which the principle of unrestricted circulation of goods among member states applies. Furthermore, according to the author, construction and extension of gas infrastructure, including LNG terminals, underground gas storage facilities, and gas pipelines in combination with a liberalized European common gas market (e.g., full legal and economic integration as regards gas markets) will enable member states to develop comparable energy mixes and import dependencies. This should further translate into their similar interests and expectations concerning common energy policy in its external dimension, including security of supply and energy solidarity. Yet, from a purely legal perspective, in spite of the fact that Article 192(2) in combination with Article 194(2) TFEU allows member states a certain degree of discretion as regards the choice of energy sources and general structure of energy supply, it should be noted that advocates of strict integration and federalization of the EU will or may endeavor to exploit Article 114 TFEU as the legal base for harmonization, and approximation of national legislations in the area in question (Bjornebye, 2010, p. 142).

Coming back to solidarity, one may point out that the treaty objective referred to in Article 194(1b): "... in the context of the establishment and functioning of the internal market... Union policy on energy shall aim to: ensure security of energy supply in the union" should be achieved in the spirit of solidarity among member states. Although the notion of solidarity appears both in Treaty on European Union (TEU) and in TFEU, as well as in the Directive 2009/73/EC, Regulation No. 715/2009/EC, and Regulation No. 994/2010/EU, a single uniform and complete definition of this term is lacking. According to some researchers, the notion of solidarity indicates that member states are responsible for maintaining a community of interests, objectives, and values and, under conditions of economic integration, remains in an ever increasing dependence upon each other (Mik, 2009, p. 46). With regards to strengthening relations between markets, their ever-growing mutual dependence and the establishment of a common market for gas, overall cooperation among member states, including between neighboring areas within member states under regional cooperation, may improve both individual and common security of gas supply. Moreover, increasing inter-dependence between member states should determine the policy of energy security of the EU as a whole as indicated in Article 122 TFEU. The council, on a proposal from the commission, may decide, in the spirit of solidarity between member states, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. What seems indispensable in this context is the development and collection of gas reserves by EU member states in addition to the exchange of information on stocks held, which will enable them to undertake coordinated and effective measures should a crisis arise. The principle of solidarity, proposed by the Commission in the Green Paper—A European Strategy for Sustainable, Competitive and Secure Energy, should apply as obligatory in the case of an energy crisis affecting one or several EU members, a crisis caused by physical threat arising in energy infrastructure (as a result of a terrorist attack or natural calamity) as well as in the case of political interruption of supplies from third countries. According to the commission, this is mainly intended to ensure the practice of the countries involved mutually informing each other about threats and their present state of stock of fuels, mutual technological assistance and development of infrastructure facilitating potential gas transit between member states.

Such a notion of energy solidarity, together with an anti-crisis mechanism, is identical with the notion of energy solidarity expressed in Regulation No. 994/2010/EU which, in principle, requires member states to be involved in cooperation and to develop appropriate plans and thereby to undertake crisis-prevention measures. However, in order for such plans to be implemented, it is necessary to create perfectly functional internal gas markets and effective competition within that market. Market-based mechanisms are, to a considerable degree, measures capable of ensuring, with support from national regulators and system operators, a high level of security of supply to the EU and to all its member states. An integrated common market will be allowed to function fully in the event of disruption of supply affecting parts of the union, whatever the cause of the disruption. To this end, a comprehensive and effective common approach to energy security is required, particularly transparency, solidarity, and non-discriminatory policies compatible with the functioning of the internal market.

Conclusions

The energy policy of the EU covering aspects of energy security and energy solidarity between the EU member states is an area which is fraught with many problems and imperfections. It seems to reflect well, general processes taking place in the European Communities, and in consequence in the EU, with periods, typical for integration, stagnation, and conflict followed by ultimate break-through and rather radical changes over the recent decade. Legislative changes that took place both at the EU (TFEU and the third energy package) and at national levels significantly enhanced prospects of creation by the EU of a common energy policy in the spirit of solidarity, ensuring, at the same time, secure supplies of energy carriers to economies. Nevertheless, one should be quite clear in assessing that the EU is only at an initial stage of developing such policy. While legal instruments are already in place, including, in particular, the treaty basis as expressed in Article 194 TFEU, what remains missing and very much needed is the true will to change, most of all political will on the part of member states.

The creation of the EU's common energy policy especially toward external parties is of crucial importance currently, as Europe is heavily dependent on external energy resources, such as gas. Moreover, the EU's increasing energy dependence, together with a decrease of its energy production, and limited contribution from renewables in many member states add further doubts and increase the feeling of urgency for a common energy policy. In fact, the Commission's Green Paper on Secure, Competitive and Sustainable Energy considers coherent external energy policy with security of supply as a priority area for the overall EU energy policy. In this, an enhanced security of gas supply to the EU requires diversification. The best way to achieve diversification of energy supplies is through creation of additional infrastructure and finding new upstream suppliers. To achieve this, liberalization leading to the establishment of a competitive internal energy market is of paramount importance. Competition fosters innovative solutions, as well as investment in new infrastructure, research and development leading to new technologies. As competition develops, the number of upstream producers and suppliers supplying EU gas markets will continue to increase, both as regards pipelines and LNG supplies, linking Europe with new supply regions and routes. The common liberalized market shall act as a guarantor of free trade within the union in energy products, including gas. Free trade in gas among member states and free access to infrastructure for all sellers (suppliers) should gradually eliminate member states' various dependencies upon imports and encourage them to have similar interests in terms of an external energy policy.

In fact, the combination of a well-functioning internal energy market and the formation of partnerships with the EU's main energy partners-suppliers (especially Russia and in the future, perhaps also Caspian countries), constitutes a solid EU energy policy in its external dimension.

However, in order to achieve such a model, member states need to cooperate together. Unfortunately, as regards gas supplies, the EU is not speaking as one or with one voice yet. As a result, the EU goals are pushed aside, giving priority to domestic aims, thus often creating tensions between member states. Moreover, extensive dependence on imports on the part of certain member states and the lack of a coherent European strategy to ensure security of supply significantly affects the bargaining position of the entire EU, which in turn gives Russia good opportunities to use gas supplies as a bargaining chip, increasing Russia's power in negotiation with individual member states.

Finally, the gas crisis in 2009 and the present Russia-Ukraine conflict have increased the feeling of urgency, concerning a common energy policy at the EU level. However, even though nobody questions the obvious need for a cohesive, EU-wide energy policy to ensure security of supply and reduce demand, thereby reducing the dependence of Europe on foreign gas supply, the actual creation of such a policy remains a difficult task. Forces at play, such as member states sovereignty, protectionism of national industries, and different approaches to Russia among member states, all pose obstacles to establishing an effective energy policy especially in its external dimension.

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