

## The EU Commission's Energy Security Package: A Challenge To Russia's Gas Dominance?

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While the creation of a common and coherent EU energy security policy is a long way off, the conflict in Ukraine and the gas crises in the winters of 2006 and 2009 proved the strategic necessity for the EU to find a common approach. Yet member states have followed different paths to mitigate their vulnerability to gas supply disruptions from Russia. The European Commission's energy security package, which was presented on the 16th of February in 2016, aims to give new political impetus for a level-playing field. Do the new Commission proposals challenge Russia's dominance as the main supplier for natural gas to the EU?<sup>1</sup>

As it stands, EU energy policy is a field in which state sovereignty tends to be superior to the supranational "Community Method". This is a matter of fact that has its legal basis in the EU treaties. Art. 194 TFEU says that a member state can make its own choice between different energy sources and determine the general structure of its energy supply. One of the most prominent examples for the current supremacy of national cooperation is the planned "Nord Stream 2"-project between Germany and Russia, which would expand an existing pipeline across the Baltic Sea and increase the amount of gas deliveries from Russia, thereby bypassing transit countries such as Poland and the Baltic states. Moreover, this pipeline project highlights the deficiencies of current EU law that requires

member states to notify the Commission of their energy agreements with non-EU countries only after they have been concluded. Under the 2012 Decision on Intergovernmental Agreements (IGA), notifications by Union members to the Commission are voluntary. As a consequence, the Commission struggled to renegotiate any ratified bilateral state agreement that jeopardised EU energy security. IGAs, in general, form the basis for many commercial gas contracts, setting out provisions such as minimum volumes or whether the gas can be resold to other countries. They also provide investors with indispensable legal certainty in the course of negotiations with energy suppliers from a non-EU country, for instance on the construction of costly energy infrastructure.

With its new 2016 proposal for an IGA decision under the umbrella of the energy security package,<sup>2</sup> the Commission attempts to prevent negative impacts on EU energy security caused by any state to state IGA. Specifically, there will be a mandatory ex-ante compatibility check which requires member states to submit their draft IGAs to the Commission before finalising them. The stated goal of the revised IGA decision proposal is to enable the progressive integration of EU energy markets and infrastructure and to avoid that measures adopted by one member state can have a negative impact on the security of supply in neighbouring countries or of the EU as a whole. It can be seen as a further instrument

of implementing the “Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy”<sup>3</sup>, which was endorsed by member states in 2015. If agreed by the co-legislators<sup>4</sup> and put into operation by all member states, the revised IGA decision would for example grant less sovereignty to individual national approaches as any bilateral agreement with a third-state like Russia would be subject to the Commission’s approval. If a national IGA is incompatible with EU law, the Commission would be able to sue a member state for infringement at the Court of Justice in Luxembourg.

The big political dispute, however, is a recurring theme and revolves around the extent to which the Union members want to be dependent from Russian gas imports. In 2013, the EU-28’s import dependency from Russia amounted to 39 per cent of total gas imports.<sup>5</sup> Bound by long-term contracts, some member states like Bulgaria or Romania are even close to a level of 80 per cent reliance. These figures clearly affirm the importance of the Commission proposal for a revised security of gas regulation as the second legislative element of the Energy Security Package.<sup>6</sup> It stipulates a ‘solidarity principle’ for member states to help out their neighbours in the event of a supply shortage in order to help ensure gas supplies to households and essential social services, such as healthcare and security services. According to the legislative proposal, the EU would be divided into nine zones, where countries would have to cooperate to draw up emergency measures. This aspect of the planned Regulation represents a reasonable policy shift towards stronger regional responsibility within the EU. However, five Western EU countries (Austria, Belgium, France, Germany and Italy) are seeking to soften the proposed new rules as such a rigid grouping of countries “would not reflect market realities and unduly restrict the flexibility required for efficient cooperation and solidarity in a crisis”.<sup>7</sup> Even beyond emergency situations, the current form of ‘network solidarity’ is fragile

too and may serve as cautionary note to advocates of a comprehensive EU Energy Union. Germany, for example, has made a habit of transmitting its own overcapacities mostly coming from renewable energy production to its neighbours Czech Republic, Poland and The Netherlands.

Furthermore, the proposed Regulation intends to build a safety net for the EU by for example improving network rules and the storage capacity within Energy Community countries such as Ukraine. One has to bear in mind, though, that better regulatory precautions do not necessarily serve as a silver bullet for limiting Russia’s leverage over the EU’s security of supplies.<sup>8</sup> Consequently, the odds of success of the Commission’s move seem rather slim. On top of that, there are different ideas within the EU of what solidarity actually means. In 2014, Hungary - most likely at the request of the Kremlin - stopped gas deliveries to Ukraine, a member of the Energy Community, at the height of the conflict in the Donbas region, thereby undermining the EU’s credibility as a reliable partner.

Against the backdrop of such non-compliant conduct, legislative efforts by the Commission for better coordination of national energy policies could be easily derided as merely declaratory. Nevertheless, one should not do so. Measures by EU institutions and member states to advance interconnections between previously national gas markets point to the fact that the EU Energy Union has picked up momentum. Especially the launch of energy infrastructure initiatives under the umbrella of the “Projects of Common Interests (PCI)” accounts for the progress the EU has made. Specifically, PCIs enjoy better access to financial support totalling to a sum of 5.35 billion euro from the Connecting Europe Facility (CEF) between 2014 and 2020.<sup>9</sup> This funding is intended to speed-up the projects and attract private investors. To become a PCI, a project must have a significant impact on the energy markets and market integration of at

least two EU countries. Furthermore, it has to contribute to diversifying energy sources. In 2015, the lion share of the EU's support went to projects in Central Eastern and South Eastern Europe as well as in the Baltic region. For instance, the gas interconnector between Slovakia and Hungary is intended to link the countries of Central Europe to the Liquefied Natural Gas (LNG) terminal in Croatia, ultimately leading to a "North South Gas Corridor" from the Baltic to the Adriatic Sea.

In a nutshell, the proposed Regulation's shift towards tightening regional cooperation in Europe by harmonising the necessary legal standards in order to enable reverse gas flows has been overdue. The same assessment holds true for the mandatory coordination and ex-ante checking of IGAs, which would represent a considerable leap forward in the attempt to construct a Energy Union. However, two fundamental issues will test the EU's commitment to reduce its vulnerability from Russia: First, there are different interpretations existing among member states with regard to the necessity to diversify energy suppliers, sources and transit countries. Second, there needs to be a stronger political will by EU governments to implement the legally-binding carbon reduction goals set out in the Paris agreement in December 2015. If the EU as a whole meets its renewable energy target of increasing the share to at least 27% of final energy consumption by 2030, the relative significance of gas deliveries from Russia would gradually decrease.

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#### References:

1. As a result of the EU's dependence on natural gas from Russia, Russia has a considerable geopolitical leverage over EU energy policies. This can be seen as a prevailing view. See for example Proedrou, Filippou (2016) "EU Energy Security beyond Ukraine: Towards Holistic Diversification", in: *European Foreign Affairs Review*, Vol. 21, No. 1, pp. 57–73.
2. See European Commission, "Intergovernmental Agreements in Energy", 16th of February 2016, Press Release, retrieved from [http://europa.eu/rapid/press-release\\_MEMO-16-309\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-309_en.htm).
3. See Official Journal of the European Union (2015), COM (2015) 80 final, retrieved from [http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF).
4. See European Parliamentary Research Service (2016) Legislative progress monitor on the 2016 IGA decision, retrieved from <https://epthinktank.eu/2016/03/11/intergovernmental-agreements-in-the-field-of-energy-eu-legislation-in-progress/>.
5. See Eurostat (2016) Energy Production and Imports, retrieved from [http://ec.europa.eu/eurostat/statistics-explained/index.php/Energy\\_production\\_and\\_imports](http://ec.europa.eu/eurostat/statistics-explained/index.php/Energy_production_and_imports).
6. See European Commission (2016) "Security of Gas Supply Regulation", Press Release, 16th of February 2016, retrieved from [http://europa.eu/rapid/press-release\\_MEMO-16-308\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-308_en.htm).
7. Bloomberg News, „Five Western EU Countries Seek to Soften Gas Security Proposal“, 8th of April 2016, retrieved from <http://www.bloomberg.com/news/articles/2016-04-08/five-western-eu-countries-seek-to-soften-gas-security-proposal>.
8. See Goldthau, Andreas / Sitter, Nick (2015) "Soft power with a hard edge: EU policy tools and energy security", in: *Review of International Political Economy*, Vol. 22, No. 5, pp. 941-965, 960, retrieved from <http://dx.doi.org/10.1080/09692290.2015.1008547>.
9. See European Commission (2016) Projects of Common Interests, retrieved from <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest>.

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