

Sijbren de Jong\*

## Big Brussels is Watching You? Enhancing Transparency in EU External Energy Deals

### Abstract

At the height of the Ukraine crisis, amid mounting concerns about the security of Europe's gas supply, Donald Tusk – then still Prime Minister of Poland – called for the creation of an 'Energy Union'. An important element in the proposal for an Energy Union is to enhance the extent to which the EU 'speaks with one voice' on energy. To that effect, the European Commission seeks to increase its oversight over bilateral agreements that Member States strike with individual energy-exporting countries by revising the information exchange mechanism that exists between Member States and the Commission. This policy brief takes a closer look at the reasons for suggesting the revision of this mechanism, how the existing information exchange mechanism came about, the challenges that may lie ahead with respect to the implementation of the proposal, and how these may affect the outcome of the Energy Union.

### 1 Introduction

With the Ukraine crisis unravelling and threats to Europe's gas supply looming, Donald Tusk – then still Prime Minister of Poland – called for the creation of an 'Energy Union' in April 2014. The Energy Union is an attempt at closer integration of the EU's energy market based on three pillars: security of supply, sustainability and competitiveness. Through, inter alia, the creation of interconnecting gas pipelines capable of 'reverse flows', diversifying the Union's energy suppliers, building electricity interconnections, and investing in renewable energy and energy efficiency, the European Union ('EU' or 'Union') hopes to contribute to greater energy security and the decarbonisation of the European economy.

The fact that the Ukraine crisis spurred calls for the creation of an Energy Union comes as no surprise, for the EU

suffered several high-profile gas interruptions over the years because of troublesome negotiations between Russia and Ukraine over gas prices and transit fees. Moreover, the war in eastern Ukraine and the fact that Gazprom – Russia's gas export monopoly – again cut off gas supplies to Ukraine in June of 2014 served to reinforce the image among EU policy-makers that Gazprom is an increasingly unreliable supplier. The view in Europe, particularly in central and eastern Europe, is that Gazprom employs a predatory 'divide and conquer' tactic aimed at playing off one Member State against the other by making use of differing degrees of dependence on Russian gas imports.<sup>1</sup>

The belief that Gazprom uses a strategy that employs a malicious cocktail of politics and economics has also permeated the European Commission's competition authority. On 22 April 2014 Margarethe Vestager, the

\* Dr. Sijbren de Jong is a Strategic Analyst with The Hague Centre for Strategic Studies (HCSS) in The Netherlands, specialised in Eurasian energy security and Europe's relations with Russia and the countries belonging to the former Soviet Union.

<sup>1</sup> Nigel Wilson, "EU Commissioner Slams Russia's 'Divide and Rule' Gas Pricing", *International Business Times UK*, 2 May 2014, <http://www.ibtimes.co.uk/eu-commissioner-slams-russias-divide-rule-gas-pricing-1447078>; Sijbren de Jong, "The EU and Gazprom", 1 April 2015, <https://euobserver.com/opinion/128201>; "Trilateral Gas Talks with Russia Fail", Text, *EurActiv | EU News & Policy Debates, across Languages*, (5 May 2014), <http://www.euractiv.com/sections/energy/trilateral-gas-talks-russia-fail-301901>.

European Commissioner for Competition, presented a formal statement of objections against the company. Gazprom, which has been under investigation since 2011, stood accused of partitioning the EU internal market and hindering the free flow of gas, muscling out competitors and preventing alternative suppliers from gaining a foothold, and of unfairly overcharging customers in some EU countries by incorporating abusive terms in long-term contracts that linked the price of gas to oil.<sup>2</sup>

The principal motivation behind Tusk's proposal on the Energy Union was to limit the potential for external energy suppliers to drive a wedge between individual EU states – an obvious reference to the difficulties perceived in the EU-Russia energy relationship. However, because of the political sensitivities surrounding Russia and the at times extensive trade relationships that individual EU Member States have with Russia, the final Commission text on the Energy Union chose not to put the spotlight on Russia and Gazprom. Instead the text focused more broadly on the need to diversify in the number of energy-supplying countries.

Arguably one of the most contentious elements of EU energy policy, at least in the eyes of the European Commission and several EU Member States, is the bilateral agreements that Member States strike with individual energy-exporting countries, including and in particular Russia. An increasingly persistent view is that these deals undercut a common approach at the EU level in relation to both energy and foreign policy by deepening integration with Russia at a time when the dominant view in Brussels is that this heightens risks to Europe's energy supply and

undermines the ability of Europe to speak with a common voice on security and foreign policy issues involving Russia.<sup>3</sup>

For this reason, the European Commission is keen to be involved in the negotiations leading up to the signing of an intergovernmental agreement (IGA) between an EU Member State and an external energy supplier. However, under EU law energy represents an area of shared legal competence with Member States holding the ultimate say over which energy sources they choose to form part of their domestic energy mix.<sup>4</sup> As a result, the European Commission cannot impose a common EU external energy policy top down. Moreover, the degree of political sensitivity concerning the transfer of sovereignty from a national level to the European level that would allow the European Commission to negotiate on behalf of Member States is such that any attempt to do so is likely to be met with fierce resistance and foot-dragging from EU capitals.

Consequently, the Commission must look for alternative ways to 'close the ranks', preferably in areas where it has a strong legal competence, such as the internal market and competition law. As a result, one of the proposals put forward in the context of the Energy Union is the revision of the existing information exchange mechanism on IGAs in the field of energy.<sup>5</sup> The aim of the proposed revision – which is due in 2016 – is for the Commission to be informed of an agreement *before* it is in fact signed, rather than afterwards, which is currently the case.<sup>6</sup> This policy brief takes a closer look at the reasons for suggesting the revision of this mechanism, how the existing information exchange mechanism came about, the challenges that may

<sup>2</sup> Alex Barker, "Q&A: Gazprom accused", *Financial Times*, 22 April 2015, <http://www.ft.com/intl/cms/s/0/fa93b0e8-e8c7-11e4-b7e8-00144feab7de.html#axzz3YDBjqhaF>.

<sup>3</sup> Renata Goldirova, "Bilateral energy deals threaten EU security, IEA says", 5 September 2008, <https://euobserver.com/economic/26688>; "Oettinger Defends European Vision on Energy", Text, *EurActiv | EU News & Policy Debates, across Languages*, (15 January 2010), <http://www.euractiv.com/priorities/oettinger-defends-european-vision-news-223382>; "Secretive Energy Deals Take Centre Stage at EU Summit", Text, *EurActiv | EU News & Policy Debates, across Languages*, (19 March 2015), <http://www.euractiv.com/sections/energy/transparency-energy-deals-takes-centre-stage-eu-summit-313034>; "Side deals with Moscow thwart drive to wean Europe off Russian gas", *Reuters*, 4 May 2014, <http://www.reuters.com/article/2014/05/04/us-ukraine-crisis-gas-gazprom-analysis-idUSBREA4302K20140504>; Dominykas Broga, "Austria-Russia energy deal exposes EU disunity over Ukraine", *Global Risk Insights*, 20 May 2014, <http://globalriskinsights.com/2014/05/austria-russia-energy-deal-exposes-eu-disunity-over-ukraine/>; "EU States Warned over 'Messy' Bilateral Energy Deals", Text, *EurActiv | EU News & Policy Debates, across Languages*, (23 September 2011), <http://www.euractiv.com/energy/eu-states-warned-messy-bilateral-news-507863>.

<sup>4</sup> Art. 194(2)(2) TFEU.

<sup>5</sup> "Decision No 994/2012/EU of the European Parliament and of the Council establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy", 25 October 2012.

<sup>6</sup> "A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy" (European Commission, 25 February 2015), 7; Ewa Krukowska and Andrew Clapham, "EU to Boost Oversight of Russian Gas Contracts, Sefcovic Says", *Bloomberg.com*, 12 May 2015, <http://www.bloomberg.com/news/articles/2015-05-12/eu-to-boost-oversight-of-russian-gas-contracts-sefcovic-says>.

lie ahead with respect to the implementation of the proposal, and how these may affect the outcome of the Energy Union.

## 2 South Stream as a catalyst

The most recent factor that influenced the decision by the Commission to propose a revision of the information exchange mechanism was the debacle involving the South Stream pipeline. South Stream was a pipeline planned to run from Russia via the Black Sea to Bulgaria, Serbia, Hungary and onwards to Austria, until Russian President Vladimir Putin announced the surprise cancellation of the project on 1 December 2014 (see Figure 1).

At an estimated cost of \$US 40 billion, and amid stagnant gas demand in Europe, the economic rationale of the project had always been questionable at best. The real rationale for the project therefore was geopolitical: to cut Ukraine out of the gas transit to Europe and get south-east Europe hooked on Russian gas for the foreseeable future.<sup>7</sup> In achieving this aim, Gazprom forged bilateral deals with EU states along

the pipeline's intended route. Unfortunately for Russia and the Member States involved, these intergovernmental agreements were found to be already in breach of EU law in 2013 by, inter alia, not adhering to the principle of 'ownership unbundling'<sup>8</sup> and by excluding third party access<sup>9</sup> to the pipeline infrastructure.<sup>10</sup> Following the

**FIGURE 2 TURKISH STREAM. SOURCE: GAZPROM**



**FIGURE 1 SOUTH STREAM PIPELINE. SOURCE: GAZPROM**



<sup>7</sup> Anjali Raval, "Pipeline politics flow both ways", *Financial Times*, 22 October 2014, [http://www.ft.com/intl/cms/s/035ee6fe-4966-11e4-8d68-00144feab7de,Authorised=false.html?\\_i\\_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F035ee6fe-4966-11e4-8d68-00144feab7de.html%3Fsiteedition%3Dintl&siteedition=intl&\\_i\\_referer=#axzz3KGgTUD46](http://www.ft.com/intl/cms/s/035ee6fe-4966-11e4-8d68-00144feab7de,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F035ee6fe-4966-11e4-8d68-00144feab7de.html%3Fsiteedition%3Dintl&siteedition=intl&_i_referer=#axzz3KGgTUD46); Sijbren de Jong and Cyril Widdershoven, "An Unexpected Death of South Stream", *New Eastern Europe*, 16 December 2014.

<sup>8</sup> Under EU law, energy companies are not allowed simultaneously to own production capacity and transmission networks.

<sup>9</sup> Third party access (TPA) refers to an obligation on companies operating transmission and distribution (gas and electricity) networks for offering services to third parties to the extent that there is capacity available on the pipeline or electricity line. TPA is as such a non-discriminatory rule, imposing an obligation on the network owner/operators to offer capacity if there is capacity available or if it has not been allocated before.

<sup>10</sup> "South Stream Bilateral Deals Breach EU Law, Commission Says", Text, *EurActiv | EU News & Policy Debates, across Languages*, (4 December 2013), <http://www.euractiv.com/energy/commission-south-stream-agreement-news-532120>.

cancellation of South Stream, Putin launched an alternative plan to ship Russian gas to Turkey, from where it would be delivered to a gas hub at the Turkish-Greek border (see Figure 2).

Consequently, ‘Turkish Stream’ – as the new pipeline was to be called – would not be subjected to EU rules on TPA in the same way as when it ran across EU territory.<sup>11</sup> Circumventing these rules had the advantage for Gazprom that it would not have to share capacity on the pipeline and could act as its sole operator, thus allowing the company to expand its presence in the Turkish market. That said, the pipeline may still be subject to similar challenges in terms of TPA requirements if Turkey were to join the territory of the Energy Community space.<sup>12</sup>

The South Stream saga not only left the EU Member States involved bereft of a role as transit states, incurring a loss of investments and potential income in the process, it also forced Brussels to threaten legal action against individual states if they did not bring their IGAs into line with EU law. Specifically, the Commission signalled a number of problems with the deals. First, the IGAs did not adhere to the principle of ownership unbundling whereby Gazprom as a producer and suppliers could not simultaneously own production capacity and the transmission network. Second, third party access had to be ensured as Gazprom could not act as the only shipper. Third, the tariff structure needed to be addressed.<sup>13</sup>

Keen to avoid a repeat scenario, the European Commission pressed forward with its proposal to revise the aforementioned information exchange mechanism.

### 3 Old wine in new bottles?

As noted in the Introduction, there is currently legislation in place on information exchange involving intergovernmental agreements in the field of energy. The idea of having the Commission involved from an early stage is not in fact new. In 2011, the European Commission launched a proposal aimed at establishing greater oversight of Member States’ bilateral energy dealings – the aim being to ‘close ranks’.<sup>14</sup> The proposal ultimately led to the adoption of Decision 994/2012 establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy.<sup>15</sup> Since the EU already possessed an information exchange mechanism on IGAs in the field of energy, this begs the question of what – in the eyes of the Commission – was so wrong with the current mechanism that it was in need of revision?

Under existing legislation, checks on the compatibility of IGAs with EU law only take place *after* a deal has been concluded. This then presents the Commission with the task of subsequently attempting to persuade the parties involved to revise the agreement and bring it into line with EU law. In practice this proves to be difficult as the parties involved will have already taken up positions in line with the agreement, and will seek to defend these. According to the Commission, allowing it to participate in negotiations in advance could also more effectively avoid undue (legal) pressure and ensure respect of European rules.<sup>16</sup> It looks likely however that the Commission’s plans for revision will meet with fierce criticism from Member States on grounds of protection of sovereignty.<sup>17</sup>

<sup>11</sup> Jonathan Stern, Simon Pirani, and Katja Yafimava, “Does the cancellation of South Stream signal a fundamental reorientation of Russian gas export policy?” (Oxford Institute for Energy Studies, January 2015).

<sup>12</sup> Andrei V. Belyi and Andreas Goldthau, “Between a rock and a hard place: International market dynamics, domestic politics and Gazprom’s strategy” (European University Institute (EUI). Florence School of Regulation. Robert Schuman Centre for Advanced Studies, April 2015), 11.

<sup>13</sup> “South Stream Bilateral Deals Breach EU Law, Commission Says.”

<sup>14</sup> James Kanter, “European Union Seeks Power to Block Bilateral Energy Deals”, *The New York Times*, 7 September 2011, <http://www.nytimes.com/2011/09/08/business/global/eu-seeks-power-to-block-bilateral-energy-deals.html>; “EU Attempts to ‘Speak with One Voice’ on Energy”, Text, *EurActiv | EU News & Policy Debates, across Languages*, (8 September 2011), <http://www.euractiv.com/energy/eu-attempt-speak-voice-energy-news-507462>.

<sup>15</sup> “Decision No 994/2012/EU of the European Parliament and of the Council Establishing an Information Exchange Mechanism with Regard to Intergovernmental Agreements between Member States and Third Countries in the Field of Energy,” 994.

<sup>16</sup> “A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy,” 7.

<sup>17</sup> Andrew Rettman, “Energy union talks show signs of divisions to come”, visited 29 April 2015, <https://euobserver.com/news/127893>; “Commission Wants to Vet Member States’ Energy Deals”, Text, *EurActiv | EU News & Policy Debates, across Languages*, (18 February 2015), <http://www.euractiv.com/sections/energy/commission-wants-vet-member-states-energy-deals-312198>; “Secretive Energy Deals Take Centre Stage at EU Summit”.

In light of the expected opposition to the Commission's plans, it is necessary to take a closer look at the decision-making process involving the proposal of 2011. Much like today's proposal, the 2011 text too sought to establish a greater role for the European Commission *before* and *during* negotiations on an IGA, even emphasising the Commission's right to participate as an observer in the negotiations.<sup>18</sup>

In defining what constitutes an IGA, the Commission referred to

"any legally binding agreement(s) between Member States and third countries which are likely to have an impact on the operation or the functioning of the internal market for energy or on the security of supply in the Union".<sup>19</sup>

The use of the word 'likely' is interesting, in the sense that it opens the door to a broad interpretation of what would fall within the definition of an IGA, thus possibly allowing the Commission to play a major role.

Despite the fact that the European Parliament (EP) was united in wanting a greater role for the European Commission, the knowledge that there was strong opposition to this idea in the EU Council prompted the Parliament to dilute the proposal in order to gather a majority of support from EU Member States. According to the rapporteur of the proposal, Poland was the only large country that wanted to back the original proposal. The other countries that pushed for it were all smaller EU states.<sup>20</sup>

This dilution becomes apparent in the EP's position on 13 September 2012. Members of the European Parliament (MEPs) removed the word 'likely' from the initial text that defines what constitutes an IGA. The amended text read:

"[it] should cover only intergovernmental agreements *having* an impact on the internal energy market or on the security of energy supply *in the Union*...."<sup>21</sup>

This amendment limited the applicability of the proposal to only those agreements that actually have an impact on the internal energy market or on the security of energy supply in the Union. What is more, the proposal was even further amended by the addition of the following text:

"[t]he initial assessment as to whether an intergovernmental agreement, or another text to which an intergovernmental agreement refers explicitly, has an impact on the internal energy market or the security of energy supply in the Union should be the responsibility of Member States; in case of doubt, a Member State should consult the Commission."<sup>22</sup>

This amendment leaves the decision whether or not to inform the Commission squarely with Member States given that they are the ones who decide if an IGA has an impact on the internal energy market or the security of supply of the EU. This strong emphasis on Member State sovereignty is perhaps most astutely expressed by the amendments made to point 9 of the preamble. The Commission originally stated

"Member States should already notify the intention to open negotiations to the Commission with regard to new intergovernmental agreements or amendments to existing agreements. The Commission should be kept informed regularly on the ongoing negotiations. It should have the right to participate as an observer in the negotiations. Member States may also request the Commission to assist them during their negotiations with third countries."<sup>23</sup>

---

<sup>18</sup> "Proposal for a Decision of the European Parliament and of the Council - setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy" (European Commission, 7 September 2011), 4–6.

<sup>19</sup> Ibid., 10.

<sup>20</sup> "Large Countries Oppose EU Gazprom Deals Scrutiny", Text, *EurActiv | EU News & Policy Debates, across Languages*, (12 September 2012), <http://www.euractiv.com/energy/largest-eu-countries-oppose-gazp-news-514739>.

<sup>21</sup> "Position of the European Parliament - with a view to the adoption of Decision No.../2012/EU of the European Parliament and of the Council establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy" (European Parliament, 13 September 2012), 3.

<sup>22</sup> Ibid.

<sup>23</sup> "Proposal for a Decision of the European Parliament and of the Council - setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy," 8.



MEPs sent the proposal back with thorough revisions. The previous passage in particular was almost entirely changed:

*“...Member States should have the option of informing the Commission of negotiations with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements. Where Member States choose that option, the Commission should be kept informed regularly of the progress of the negotiations. Member States should have the possibility to invite the Commission to participate in the negotiations as an observer. The Commission should also have the possibility to participate as an observer at its own request, subject to the approval of the Member State concerned.”<sup>24</sup>*

In essence, the EP's amendments relegated the role of the Commission to that of an observer only, and only if Member States so desire. Moreover, the decision on whether to inform the Commission before or during negotiations with a third country on an IGA also rests with the Member State in question.

The final text which was adopted on 27 October 2012 left little to the Commission's imagination, incorporating many of the EP's amendments including that involving the Commission in negotiations on an IGA is an *option* for Member States, rather than a *right* of the Commission itself. Most importantly, the decision as to whether an IGA has an impact on the energy security of the Union lies with Member States, in line with the amendments proposed by the EP.<sup>25</sup>

#### 4 This time is different?

The stark contrast between the original proposal and the final text raises the question why the European Commission thinks now is a good moment to revise the existing legislation. Given that the proposed revisions are much in

line with what has been attempted before, why would the decision-making process have a different outcome this time?

An obvious factor is the gravely altered geopolitical context that put the perceived unreliability of Russian gas supplies firmly back into the spotlight. The annexation of Crimea, followed by the war in eastern Ukraine, has essentially placed the entire post-Cold War order upside down. Whereas in 2011 the effects of the 2006 and 2009 gas crises were not forgotten, Europe had quickly moved back to normal relations with Moscow – even after the brief conflict between Russia and Georgia in August 2008. This time around, a return to ‘business as usual’ seems much further away given that the sanctions are linked to the full implementation of the Minsk II deal brokered in February 2015.

The Minsk II agreement demands the creation of a demilitarised zone in eastern Ukraine, an exchange of prisoners of war, the pardoning of those who may have committed war crimes, the reinstating of economic ties between Kiev and the Donbass region, and a process of decentralisation with the aim of increasing the political autonomy of the separatist regions.<sup>26</sup> In recent months, fighting in eastern Ukraine has subsided and a Summit in Paris between Russia, Ukraine, France and Germany held in early October saw the arrival of a deal on rogue elections and weapons pull-backs from eastern Ukraine. These positive signs notwithstanding, it remains to be seen whether the Minsk II agreement will ultimately be fully honoured and the sanctions will be relieved.

The problem is that since the Paris Summit, the geopolitical climate has thoroughly blurred. Putin's launch of a bombing campaign in Syria has thrust Russia back onto the world stage, whereby the Kremlin is keen to be seen as the indispensable ally in brokering a solution to end Syria's four-year civil war. Russia claims to be combating the

<sup>24</sup> “Position of the European Parliament - with a view to the adoption of Decision No.../2012/EU of the European Parliament and of the Council establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy,” 4–5.

<sup>25</sup> “Decision No 994/2012/EU of the European Parliament and of the Council establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy,” n. 9.

<sup>26</sup> Niall Ferguson, “The meaning of the Minsk agreement”, *Financial Times*, 13 February 2015, <http://www.ft.com/intl/cms/s/0/3a1b3ab0-b371-11e4-9449-00144feab7de.html#axzz3dm5mgNJj>, a transcendent moment of”, “URL”: “<http://www.ft.com/intl/cms/s/0/3a1b3ab0-b371-11e4-9449-00144feab7de.html#axzz3dm5mgNJj>”, “ISSN”: “0307-1766”, “author”: [{"family": “Ferguson”, “given”: “Niall”}], “issued”: [{"date-parts”: [{"2015”, 2, 13}]}], “accessed”: [{"date-parts”: [{"2015”, 6, 22}]}], “schema”: “https://github.com/citation-style-language/schema/raw/master/csl-citation.json”}

insurgents of Islamic State, yet in reality its bombs are doing more damage to Syria's already troubled and fragmented opposition.<sup>27</sup> The move appears to be more centred on securing Russia's interests in the eastern Mediterranean and ensuring Moscow is an integral part of any discussion on Syria's future status.<sup>28</sup> In positioning itself as the essential power broker to end the Syria conflict, Russia is keen to strike a deal over Ukraine that could bring an end to the sanctions. Moreover, the refugee crisis in Europe is causing severe strain to the Union's internal coherence – so much in fact that senior politicians are gradually buying in to Putin's suggestion to lift sanctions.<sup>29</sup>

This rapidly shifting geopolitical climate also has a bearing on the debates concerning the energy union. The Commission might be banking on the idea that the troubled relations with Russia since early 2014 will convince most Member States to agree to greater coordination of bilateral energy negotiations and a bigger role for the Commission on deals involving non-EU states, Russia in particular. However, there are a number of reasons why this may prove to be a naïve understanding.

First, not all EU Member States share the same threat perception vis-à-vis Russia as do some eastern Member States, notably the Baltic States and Poland. When seen from the perspective of energy policy in north-western Europe, this different threat perception translates into a belief that EU Member States in this part of Europe view their proximity to nearby gas producers, their level of interconnectedness in terms of pipeline infrastructure and the competitiveness of their domestic markets as a sufficient bulwark against the whims of Gazprom and Putin. What

is more, those EU Member States that are big players in Europe's energy sector, such as the UK, the Netherlands, Denmark and France – to name but a few – are careful not to give up sovereignty on an issue area that is vital to their economies.

Second, other countries oppose the Energy Union proposal for different reasons. Hungary – a country whose Prime Minister enjoys close ties to Russian President Putin – was among the first countries to criticise the Commission's plans to create an Energy Union. Speaking two days after a high-level Summit with Putin in Budapest in February 2015 where Hungary secured a major discount on gas pricing, Hungary's Prime Minister Viktor Orbán claimed Brussels's plans hinder Member State sovereignty and that his country does not agree it must inform the Commission of gas supply agreements with Russia.<sup>30</sup> On 7 April 2015, Hungary endorsed Putin's plans for the creation of Turkish Stream during a signing ceremony in Budapest.<sup>31</sup>

Meanwhile, Greece – the Eurozone's embattled member – was seen trying to broaden its options vis-à-vis Brussels by reaching out to Russia. On 7 April during the same ceremony in Budapest, Greece too added its name to a declaration indicating support for the Turkish Stream project.<sup>32</sup> What is more, a day later Greek Prime Minister Tsipras embarked on a trip to Moscow to discuss Greece's participation in the Turkish Stream project, amid rumours that Athens was seeking financial aid from Moscow.<sup>33</sup> Greece plays a crucial role in the project because of the possible creation of a gas hub on the Turkish-Greek border from where gas supplies can then be transited onwards to Europe, via Greek territory. Although Tsipras came back

<sup>27</sup> Zack Beauchamp, "Russia Says It's Bombing ISIS in Syria. This Map Shows It's Lying," *VOX World*, October 7, 2015; "More than 90% of Russian Airstrikes in Syria Have Not Targeted Isis, US Says," *The Guardian*, October 7, 2015, sec. World news, 90, <http://www.theguardian.com/world/2015/oct/07/russia-airstrikes-syria-not-targeting-isis>.

<sup>28</sup> Keith Johnson, "Putin's Mediterranean Power Play in Syria," *Foreign Policy*, October 2, 2015, <http://foreignpolicy.com/2015/10/02/putins-mediterranean-power-play-in-syria-navy-tartus-fleet/>.

<sup>29</sup> Robin Emmott and Phil Stewart, "Syria and Ukraine: Two Fronts in Russian War for Influence," *Reuters UK*, October 1, 2015, <http://uk.reuters.com/article/2015/10/01/uk-mideast-crisis-ukraine-idUKKCN0RV4RC20151001>.

<sup>30</sup> "Orbán Says EU's Energy Union Is a Threat to Hungary", Text, *EurActiv | EU News & Policy Debates, across Languages*, (20 February 2015), <http://www.euractiv.com/sections/eu-priorities-2020/orban-says-eus-energy-union-threat-hungary-312290>.

<sup>31</sup> Andrew Rettman, "Greece and Hungary sign up to Russia gas pipeline", 8 April 2015, <https://euobserver.com/energy/128261>.

<sup>32</sup> *Ibid.*

<sup>33</sup> Eric Maurice, "Tsipras flies to Moscow amid gas talks", 7 April 2015, <https://euobserver.com/energy/128253>.

empty-handed from his visit in April and the pipeline has since been scaled back in capacity, rendering void any extension into south-eastern Europe, Greece's Prime Minister took the bait set out by Gazprom thus driving a wedge in internal EU cohesion.<sup>34</sup> Greece's eagerness to side with Russia on energy deals render the country – for the time being – an unlikely champion of the Commission's plans on information exchange.

## 5 The road ahead

In light of the fragmented state of support for the Energy Union and the presence of sovereignty concerns reminiscent of those present when the Commission first launched its plan for an information exchange mechanism in 2011, it is unlikely that the final proposal will receive a warm welcome in the Council. Instead, with Member States reluctant to cede ground to the Commission, the likely outcome is a fierce turf battle where the aforementioned Member States will firmly defend their positions.

That said, the Commission need not despair. If there is one positive thing that emerged from the South Stream debacle, it is the recognition that competition policy is a useful tool for making sure that EU Member States and third countries alike abide by the rules. However, although undoubtedly emboldened by the realisation that it holds a powerful correcting 'stick', the Commission may wish to seek other, 'softer', ways of fostering greater coherence - unless of course, circumstances dictate otherwise.

One way of doing so is to push harder for the expansion of the Energy Community Treaty to Turkey. If the same legal rules and standards apply on both sides of the EU border, then the chance of companies such as Gazprom seeking exemptions or loopholes that play off one state against the other greatly diminishes. Ultimately, the Commission's employment of such a strategy may have a much higher chance of success than attempts to force itself into the passenger seat during Member State bilateral negotiations.

---

<sup>34</sup> "Gazprom Cuts Turkish Stream's Capacity by Half," *Daily Sabah / Reuters*, October 6, 2015, <http://www.dailysabah.com/energy/2015/10/06/gazprom-cuts-turkish-streams-capacity-by-half>; Sijbren de Jong and Willem Oosterveld, "From Brussels with Regulations: Tsipras Should Have Known Better," Text, *EurActiv*, (July 14, 2015), <http://www.euractiv.com/sections/energy/brussels-regulations-tsipras-should-have-known-better-316298>.



## References

- “A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy.” European Commission, February 25, 2015.
- Barker, Alex. “Q&A: Gazprom Accused.” *Financial Times*, April 22, 2015. <http://www.ft.com/intl/cms/s/0/fa93b0e8-e8c7-11e4-b7e8-00144feab7de.html#axzz3YDBjqhaF>.
- Belyi, Andrei V., and Andreas Goldthau. “Between a Rock and a Hard Place: International Market Dynamics, Domestic Politics and Gazprom’s Strategy.” European University Institute (EUI). Florence School of Regulation. Robert Schuman Centre for Advanced Studies, April 2015.
- Broga, Dominykas. “Austria-Russia Energy Deal Exposes EU Disunity over Ukraine.” *Global Risk Insights*, May 20, 2014. <http://globalriskinsights.com/2014/05/austria-russia-energy-deal-exposes-eu-disunity-over-ukraine/>.
- “Commission Wants to Vet Member States’ Energy Deals.” Text. *EurActiv | EU News & Policy Debates, across Languages*, February 18, 2015. <http://www.euractiv.com/sections/energy/commission-wants-vet-member-states-energy-deals-312198>.
- “Decision No 994/2012/EU of the European Parliament and of the Council Establishing an Information Exchange Mechanism with Regard to Intergovernmental Agreements between Member States and Third Countries in the Field of Energy,” October 25, 2012.
- de Jong, Sijbren. “The EU and Gazprom,” April 1, 2015. <https://euobserver.com/opinion/128201>.
- de Jong, Sijbren, and Willem Oosterveld. “From Brussels with Regulations: Tsipras Should Have Known Better.” Text. *EurActiv*, July 14, 2015. <http://www.euractiv.com/sections/energy/brussels-regulations-tsipras-should-have-known-better-316298>.
- de Jong, Sijbren, and Cyril Widdershoven. “An Unexpected Death of South Stream.” *New Eastern Europe*, December 16, 2014.
- Emmott, Robin, and Phil Stewart. “Syria and Ukraine: Two Fronts in Russian War for Influence.” *Reuters UK*, October 1, 2015. <http://uk.reuters.com/article/2015/10/01/uk-mideast-crisis-ukraine-idUKKCN0RV4RC20151001>.
- “EU Attempts to ‘Speak with One Voice’ on Energy.” Text. *EurActiv | EU News & Policy Debates, across Languages*, September 8, 2011. <http://www.euractiv.com/energy/eu-attempt-speak-voice-energy-news-507462>.
- “EU States Warned over ‘Messy’ Bilateral Energy Deals.” Text. *EurActiv | EU News & Policy Debates, across Languages*, September 23, 2011. <http://www.euractiv.com/energy/eu-states-warned-messy-bilateral-news-507863>.
- Ferguson, Niall. “The Meaning of the Minsk Agreement.” *Financial Times*, February 13, 2015. <http://www.ft.com/intl/cms/s/0/3a1b3ab0-b371-11e4-9449-00144feab7de.html#axzz3dm5mgNJj>.
- “Gazprom Cuts Turkish Stream’s Capacity by Half.” *Daily Sabah / Reuters*, October 6, 2015. <http://www.dailysabah.com/energy/2015/10/06/gazprom-cuts-turkish-streams-capacity-by-half>.
- Goldirova, Renata. “Bilateral Energy Deals Threaten EU Security, IEA Says,” September 5, 2008. <https://euobserver.com/economic/26688>.
- Kanter, James. “European Union Seeks Power to Block Bilateral Energy Deals.” *The New York Times*, September 7, 2011. <http://www.nytimes.com/2011/09/08/business/global/eu-seeks-power-to-bloc-bilateral-energy-deals.html>.
- Keith Johnson. “Putin’s Mediterranean Power Play in Syria.” *Foreign Policy*, October 2, 2015. <http://foreignpolicy.com/2015/10/02/putins-mediterranean-power-play-in-syria-navy-tartus-fleet/>.
- Krukowska, Ewa, and rew Clapham. “EU to Boost Oversight of Russian Gas Contracts, Sefcovic Says.” *Bloomberg.com*, May 12, 2015. <http://www.bloomberg.com/news/articles/2015-05-12/eu-to-boost-oversight-of-russian-gas-contracts-sefcovic-says>.
- “Large Countries Oppose EU Gazprom Deals Scrutiny.” Text. *EurActiv | EU News & Policy Debates, across Languages*, September 12, 2012. <http://www.euractiv.com/energy/largest-eu-countries-oppose-gazp-news-514739>.
- Maurice, Eric. “Tsipras Flies to Moscow amid Gas Talks,” April 7, 2015. <https://euobserver.com/energy/128253>.
- “‘More than 90%’ of Russian Airstrikes in Syria Have Not Targeted Isis, US Says.” *The Guardian*, October 7, 2015, sec. World news. <http://www.theguardian.com/world/2015/oct/07/russia-airstrikes-syria-not-targeting-isis>.
- “Oettinger Defends European Vision on Energy.” Text. *EurActiv | EU News & Policy Debates, across Languages*, January 15, 2010. <http://www.euractiv.com/priorities/oettinger-defends-european-visio-news-223382>.

- “Orbán Says EU’s Energy Union Is a Threat to Hungary.” Text. *EurActiv | EU News & Policy Debates, across Languages*, February 20, 2015. <http://www.euractiv.com/sections/eu-priorities-2020/orban-says-eus-energy-union-threat-hungary-312290>.
- “Position of the European Parliament - with a View to the Adoption of Decision No.../2012/EU of the European Parliament and of the Council Establishing an Information Exchange Mechanism with Regard to Intergovernmental Agreements between Member States and Third Countries in the Field of Energy.” European Parliament, September 13, 2012.
- “Proposal for a Decision of the European Parliament and of the Council - Setting up an Information Exchange Mechanism with Regard to Intergovernmental Agreements between Member States and Third Countries in the Field of Energy.” European Commission, September 7, 2011.
- Raval, Anjli. “Pipeline Politics Flow Both Ways.” *Financial Times*, October 22, 2014. [http://www.ft.com/intl/cms/s/035ee6fe-4966-11e4-8d68-00144feab7de,Authorised=false.html?\\_i\\_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F035ee6fe-4966-11e4-8d68-00144feab7de.html%3Fsiteedition%3Dintl&siteedition=intl&\\_i\\_referer=#axzz3KGgTUd46](http://www.ft.com/intl/cms/s/035ee6fe-4966-11e4-8d68-00144feab7de,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F035ee6fe-4966-11e4-8d68-00144feab7de.html%3Fsiteedition%3Dintl&siteedition=intl&_i_referer=#axzz3KGgTUd46).
- Rettman, Andrew. “Energy Union Talks Show Signs of Divisions to Come.” Accessed April 29, 2015. <https://euobserver.com/news/127893>.
- Rettman, Andrew. “Greece and Hungary Sign up to Russia Gas Pipeline,” April 8, 2015. <https://euobserver.com/energy/128261>.
- “Secretive Energy Deals Take Centre Stage at EU Summit.” Text. *EurActiv | EU News & Policy Debates, across Languages*, March 19, 2015. <http://www.euractiv.com/sections/energy/transparency-energy-deals-takes-centre-stage-eu-summit-313034>.
- “Side Deals with Moscow Thwart Drive to Wean Europe off Russian Gas.” *Reuters*, May 4, 2014. <http://www.reuters.com/article/2014/05/04/us-ukraine-crisis-gas-gazprom-analysis-idUSBREA4302K20140504>.
- “South Stream Bilateral Deals Breach EU Law, Commission Says.” Text. *EurActiv | EU News & Policy Debates, across Languages*, December 4, 2013. <http://www.euractiv.com/energy/commission-south-stream-agreemen-news-532120>.
- Stern, Jonatan, Simon Pirani, and Katja Yafimava. “Does the Cancellation of South Stream Signal a Fundamental Reorientation of Russian Gas Export Policy?” Oxford Institute for Energy Studies, January 2015.
- “Trilateral Gas Talks with Russia Fail.” Text. *EurActiv | EU News & Policy Debates, across Languages*, May 5, 2014. <http://www.euractiv.com/sections/energy/trilateral-gas-talks-russia-fail-301901>.
- Wilson, Nigel. “EU Commissioner Slams Russia’s ‘Divide and Rule’ Gas Pricing.” *International Business Times UK*, May 2, 2014. <http://www.ibtimes.co.uk/eu-commissioner-slams-russias-divide-rule-gas-pricing-1447078>.
- Zack Beauchamp. “Russia Says It’s Bombing ISIS in Syria. This Map Shows It’s Lying.” *VOX World*, October 7, 2015.

## European Policy Analysis available in English

### 2015

---

2015:26epa

*Big Brussels is Watching You? Enhancing Transparency in EU External Energy Deals*

Author: Sijbren de Jong

2015:25epa

*Completing the Union: Is the European Energy Union Really Real?*

Author: Harold James

2015:23epa

*The constitutional and historical relevance of the AFSJ and the CFSP/ESDP*

Author: Massimo Fichera

2015:22epa

*Intelligence and decision-making within the Common Foreign and Security Policy*

Author: Björn Fägersten

2015:20epa

*The Regulatory Cooperation Chapter of the TTIP Challenges and Opportunities*

Author: Alberto Alemanno

2015:19epa

*Low Inflation and Deflation in EU Countries Outside the Euro Area: Should Policymakers be Concerned?*

Authors: Plamen Iossifov and Jiří Podpiera

2015:17epa

*Social Housing in Europe*

Authors: Kathleen Scanlon, Melissa Fernández Arrigoitia and Christine Whitehead

2015:15epa

*The Balance of Power over the EU Budget: European Expenditure since the Lisbon Treaty*

Author: Giacomo Benedetto

2015:14epa

*The Usefulness of the Scoreboard of the Macroeconomic Imbalances Procedure in the European Union: Potentials for Reform*

Author: Tobias Knedlik

2015:13epa

*The impact of mega regional agreements on international investment rules and norms*

Author: Steve Woolcock

2015:12epa

*The Impact of the Transatlantic Trade and Investment Partnership (TTIP) on the Spanish Regions – A Preliminary Analysis*

Authors: José Villaverde and Adolfo Maza

2015:11epa

*Transatlantic Market Integration, Business and Regulation: Building on the WTO*

Authors: Bernard Hoekman and Petros C. Mavroidis

2015:10epa

*Juncker's investment plan: what results can we expect?*

Author: Martin Myant

2015:9epa

*Russia's economic troubles – a perfect storm of falling oil prices, sanctions and lack of reforms*

Author: Torbjörn Becker

2015:8epa

*Entering a World of Footloose Tax Bases: Can the EU Generate Its Own Income?*

Author: Daniel Tarschys

2015:7epa

*Britain and the EU: a negotiator's handbook*

Author: Roderick Parkes

2015:6epa

*Europe's pivotal peace projects: Ethnic separation and European integration*

Author: Lynn M. Tesser

2015:5epa

*Groundhog Day in Greece*

Author: Thorsten Beck

2015:4epa

*The Greek elections of 2015 and Greece's future in the eurozone*

Author: Dionyssis G. Dimitrakopoulos

2015:3epa

*The diplomatic role of the European Parliament 's parliamentary groups*

Author: Daniel Fiott

2015:2epa

*Social Policy and Labour Law during Austerity in the European Union*

Author: Niklas Bruun

2015:1epa

*International Trade Union Solidarity and the Impact of the Crisis*

Authors: Rebecca Gumbrell-McCormick and Richard Hyman

## **2014**

---

2014:9epa

*Making Sense of Subsidiarity and the Early Warning Mechanism – A Constitutional Dialogue?*

Author: Jörgen Hettne

2014:7epa

*A Comparative Framing of Fundamental Rights Challenges to Social Crisis Measures in the eurozone*

Author: Claire Kilpatrick and Bruno De Witte

2014:4epa

*Why vote at an election with no apparent purpose? Voter turnout at elections to the European Parliament*

Author: Mark N. Franklin

2014:3epa

*The EU Budget and Balance of Powers Between the European Parliament and the EU Governments*

Author: Sara Hagemann

2014:2epa

*Between a rock and a hard place: the future of EU treaty revisions*

Author: Carlos Closa

2014:1epa

*Scrutiny in Challenging Times – National Parliaments in the eurozone Crisis*

Authors: Katrin Auel and Oliver Höing