



Vrije Universiteit Brussel



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ENERGY SECURITY
in a MULTIPOLAR WORLD

Perceptions of energy security threats to the EU and wider Europe

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Presentation Outline

- Old Drivers:
- Energy security (balancing security of supply and demand)
- Upholding stringent decarbonisation objectives
- Completing a liberalised energy market.



Presentation Outline

- New Drivers: Russian termination of ECT; Energy Charter Treaty
- East/ west geopolitical divisiveness regarding key Gazprom developments
- Sept 2011 EU Energy Policy: heightened negotiating status of the European Commission.

Driver 1: Energy Security 2003-2008

Markets: Extreme price volatility for oil & gas

Political: Robust defence by EU MS of national energy 'champions'; opposition to unbundling

Russia-Ukraine Gas Spats: 2006, 2009

Rise of Asian energy import market

Result: Awareness that **energy security** means diversifying sources, import methods AND reducing demand at home

Defining Energy Security

- ‘The assurance of the ability to access the energy resources required for the continued development of national power ... and adequate infrastructure to deliver these supplies to market’ (Kalicki and Goldwyn, 2005).
- Importer states: **security of supply** = consistent delivery of affordable energy sources.
- Exporter states: **security of demand** = access to a developed and reliable market for the long-term sale of energy products.

2008-2011 Energy Security

- Price volatility of current energy markets
- Investment insecurity/European economic downturn: whether/when to proceed with large energy production projects
- Differing east-west geopolitical attitudes over partnering with Gazprom
- Stasis on 3 long-standing pipeline projects (Trans-Adriatic Pipeline; Interconnector-Turkey-Greece-Italy; Nabucco)
- October 2011 Completion of Nordstream



Key Energy Security Questions

- Subsidiarity Issue: who is the best policy actor to take forward investment in energy, the safeguarding of energy security?
- An EU actor to promote Union-level solutions, or individual Member States promoting national solutions?
- Public solutions via law or market solutions via competition?

Driver 2: Green EU

- Soft: promote a clear change in ‘demand side’ attitudes
- Tough: EU 20/20/20 Strategy: reducing CO₂ outputs by 20%, increasing share of renewables by 20%, increased EE 20%
- Mainstreaming energy efficiency and making ‘alternatives’ less of an alternative
- Market mechanisms: ETS, pushing R&D to ‘conquer’ CCS

Key Green Questions

- How binding are the targets? (S&G Pact specter)
- Unclear: How green policies solve energy security issues.
- Unclear: The measure of effort to genuinely tackle decarbonisation. West? (Culpable in primary cause of GHG.) China, India et al (New GHG contributors/disagree that they should restrain their growth)
- Uncertain outcome: European producers now seek to address GHG whilst ensuring continued reliance on FF.



Driver 3: Completing a liberalised energy market.

- How: successive series of packages & legislation to promote:
 - Competition/ level playing field
 - Economically liberalised but technically regulated market with many more energy players
 - Unbundled vertically integrated companies, more cross-border energy infrastructure projects

Completing the market

- **Second Strategic Review: *An EU Energy Security and Solidarity Action Plan***
- **‘Third Liberalization Package’ :**
A systematic *unbundling* to promote the complete liberalization of the European energy market, the creation of the Agency for the Cooperation of Energy Regulators (ACER).

Key Market Questions

- Commission as ‘enforcer’ of the market
- Find the entrepreneurial potential in demand-side solutions: energy efficiency and alternatives could present opportunity for collective, cross-border, public-private action
- Lessons from the UK’s liberalised markets?

New Driver: Russian termination of ECT

- Russia applied the ECT provisionally (provisional application). But perennially unhappy with the wide scope & numerous obligations imposed by ECT.
- Yukos arbitration panel ruled that Russia is still liable under PA for breaches of investors' rights under the ECT. (Russian actions in effectively bankrupting Yukos amount to measures equivalent to appropriation)



Gazprom vs. ECT

- ECT ratification: diminish Gazprom's position in the European energy markets by forcing Russia to open its pipeline network and grant access to a third party to their pipeline system wherever there is available capacity in a given gas or oil pipeline (which is generally abundant).
- Mistaken view: ECT's provisions, which specifically *exclude* mandatory third party access to pipeline systems. This is for parties to negotiate themselves. Also, Russia liable now, and for the next 20 years.

Gazprom vs. ECT

Russian withdrawal? Unsuccessful attempt to to shake off its remaining legal commitments under the ECT?

Or the nail in the coffin of a 20 year west-east multilateral treaty instrument that supports the rights of foreign investors?

Irony Increasing Commission anxiety with the rising number of MS-investor disputes under the ECT.

Commission vs. ECT

- Commission: unhappy with principles and structures of the ECT
- As a result of MS' national energy companies bringing claims against another Member State for breaches of the ECT
- Commission/ECJ feels the ECT may somehow pre-empt EU law.

Commission vs. ECT

- Hungary: implemented a Commission Decision on State aid, and terminated its Power Purchase Agreements with Belgian Electrabel. Hungary sues by Electrabel for an alleged breach of the ECT.
- Outcome: ECT viewed as a threat, with their supposed ability to trump EU law.
- EU (as a REIO) + MS ratified the ECT on the understanding that there was no conflict between EU law and the ECT.
- Commission will likely look for softer approaches to procure investment guarantees.

New Driver: East vs. West

- Pro-Gazprom attitudes in Germany, France, Italy and Austria regarding bilateral contracts, pipelines, gas storage facilities.
- Anti-Gazprom attitudes in Poland & eastern EU.
- Anxiety and opposition in transit states.
- Why? MS ability to negotiate bilateral contracts, despite Lisbon's 'solidarity' clause (Article 122)
- Clashes have spilled out into the open, producing a discordant view of European energy needs to suppliers.

Final Driver: Commission

- July 2011, the Council examines the idea of mandating the European Commission to negotiate gas agreements (independent of Member States) with external suppliers, from Eurasian suppliers like Turkmenistan and Azerbaijan + scrutinize all subsequent MS energy agreements with third parties.

Commission

7 September 2011: 'The EU Energy Policy:
Engaging with Partners Beyond our Borders'

43 actions:

MS must share info on all their energy agreements
with third countries, amongst themselves & the
Commission

Commission 'may provide an opinion on the
conformity of these agreements with EU law and
EU security of supply objectives'



2011 EU Energy Policy

- If mandated by the Council, the Commission **could negotiate** key energy agreements (at EU level, to achieve EU core objectives) e.g. with Russia, Azerbaijan and Turkmenistan
- A new energy partnership on renewables with Southern Med states
- Advocate internationally legally binding nuclear safety standards

2011 EU Energy Policy

- Why? To improve coordination among EU MS in identifying and implementing external energy policy.
- To extend EU's energy market beyond its borders to ensure security of European energy supplies by fostering international energy partnerships (diversification)
- To prevent bilateral deals from undermining burgeoning sense of collective need & EU's own negotiating position



2011 EU Energy Policy

- To give the EU 'more heft' when dealing with energy-rich states
- 'If we have a common front vis-à-vis supplier countries... we've got a completely different weight. Individual member states aren't able to achieve as much.' Oettinger, 7 Sept.
- How?



2011 EU Energy Policy

- ‘It doesn’t mean that the Commission is going to be at the negotiating table in all negotiations; or review all existing agreements... that would be overly-bureaucratic.’
- It will offer advice, legal opinions on a case-by-case basis, in scenarios that could affect security of supply, or hinder competition.

2011 EU Energy Policy

- An enormous step forward? Or source of legal and regulatory confusion & stasis?
- Concretizes the role of energy security within European foreign policy.
- May provide the EU with a new capacity to actually deal with its own energy security problems via suppliers, not merely market mechanisms.

2011 EU Energy Policy

- Grants the Commission an even more substantial role as a European energy actor.
- Uses Council political declaration to circumvent aspects of Title XXI Lisbon
- MS energy policy determining supplies, transport and transit and investments now visibly curtailed by Commission scrutiny