



REPORT

THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS
INSTITUTE OF POLITICAL STUDIES OF THE POLISH ACADEMY OF SCIENCES
NORWEGIAN INSTITUTE OF INTERNATIONAL AFFAIRS

THE EU GAS GAME: TIME TO REDEFINE THE RULES? CASE STUDIES OF RUSSIA AND NORWAY AND LESSONS FOR THE EU, NORWAY AND POLAND

WARSAW
AUGUST 2015



GoodGov

AUTHORS: ALEKSANDRA GAWLIKOWSKA-FYK, ZUZANNA NOWAK, LIDIA PUKA

THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS
INSTITUTE OF POLITICAL STUDIES OF THE POLISH ACADEMY OF SCIENCES
NORWEGIAN INSTITUTE OF INTERNATIONAL AFFAIRS

The EU Gas Game:
Time to Redefine the Rules?
Case Studies of Russia and Norway
and Lessons for the EU, Norway and Poland

Authors:
Aleksandra Gawlikowska-Fyk, Zuzanna Nowak, Lidia Puka

Warsaw, August 2015

© Polski Instytut Spraw Międzynarodowych, 2015

Content editor
Roderick Parkes

Copy editor
Brien Barnett

Technical editor and cover designer
Dorota Dołęgowska

978-83-64895-52-4 pdf

Polski Instytut Spraw Międzynarodowych
ul. Warecka 1a, 00-950 Warszawa
phone (+48) 22 556 80 00, fax (+48) 22 556 80 99
pism@pism.pl, www.pism.pl

Contents

1. Introduction	5
2. Russia and Norway as Suppliers: A Quick Comparison.	7
2.1. The EU–Norway Gas Relationship	8
2.1.1. Geography: Norwegian Gas as a “European Asset”	8
2.1.2. Norms: From Opposition to Approximation.	9
2.1.3. Politics: Business First	10
2.2. The EU–Russia Gas Relationship.	11
2.2.1. Geography: Near and Yet so Far	11
2.2.2. Norms: High Legal Ambitions, Base Contractual Reality	13
2.2.3. Politics: Politics Is Business	14
2.3. Comparing Suppliers: Norway and Russia Go Head to Head	16
3. The EU in Action—Same Rules for Norwegian and Russian Champions?	17
3.1. The EU Energy Toolkit	17
3.2. EU Competition Law in Action	17
3.3. The EU’s Influence on Statoil	18
3.3.1. The EU Liberalises Access to Exploration Licenses and Reduces Statoil’s Privileges	18
3.3.2. The EU’s Role in Dismantling the Norwegian Cartel for Gas Sales	19
3.3.3. The Commission’s Handling of Statoil’s Entry to the Irish Market	19
3.3.4. The EU’s Control of Statoil’s Mergers and Acquisitions	20
3.4. Gazprom in the EU Spotlight.	20
3.4.1. Enhancing Gas Resale in Western Europe	20
3.4.2. Merger Control	21
3.4.3. Alleged Antitrust Practices in Central and Eastern Europe.	21
4. The Energy Union—Are There Any New Tools in the External Energy Policy of the EU?	23
5. Recommendations for Poland and Norway	25
Appendix	27

1. Introduction

The EU's heavy reliance on imports of energy resources leaves it vulnerable to external suppliers and comes at an economic and political cost. Among the EU's energy imports its governance vulnerability is especially visible in the gas sector. This is because pipeline infrastructure, long-term contracts, price formulas and an underdeveloped European market weaken the EU's hand in bargaining with its major gas suppliers, principally Russia and Norway. Norwegian and Russian gas constitutes 80% of all gas imports to the EU.

The European Union does have one considerable lever in dealing with Norway and Russia: it is a very attractive market for both countries. This gives the EU some scope to set the rules of the game in terms of gas. The EU assumes the establishment of a fully-fledged European internal market, as well as implementing competition law and exporting market regulations beyond its borders in a bid to reduce prices and depoliticise gas imports, but that raises a question about whether the EU is neglecting other tools available to the EU, such as brute political or financial levers. Indeed the lack of political cohesion among the Member States remains the EU's Achilles' heel and its financial capacity is insufficient to force the market to integrate.

This report offers a comparison of the EU's energy relations with Norway and Russia. It begins by setting out the current geographical, legal, economic and political contexts of the two relationships. The EU's deployment of its prime normative tool competition law is then examined in order to assess how efficient it has been in dealing with the Norwegian and Russian national champions, Statoil and Gazprom, respectively, and whether the treatment of the two has varied. The significance of the equal treatment angle seems to be key to an effective setting of normative standards. The conclusions highlight the possible paths of development of the so-called energy union and ask whether the EU can go beyond its current normative approach and whether it should consider asserting various other policy tools in its dealings with external gas suppliers.

The conclusions do, however, go beyond this narrow question of leverage. Norway has chosen a mode of engagement with the EU in gas affairs that is far more conciliatory than Russia's zero-sum bargaining. This requires a more nuanced response from the EU. Moreover, this report is part of the broader GoodGov project, which focuses on Norwegian and Polish cooperation, and the conclusion will offer specific recommendations for Oslo and Warsaw to strengthen national governance and bilateral cooperation. Bridging their interests as gas exporter and importer in this way would mark a step towards coherent European policy.

2. Russia and Norway as Suppliers: A Quick Comparison

Major gas exporters Russia and Norway have partly similar and partly different approaches to energy policy¹ (*Appendix Table: Russia–Norway Comparison*). Some of their interests frequently converge, for example, because they hold similar positions in the global and regional value chains, where they face similar challenges. On the other hand, their interests diverge when they need to compete with each other in the same market.

Because both countries are global energy powers, they share what can be termed “producer interests” in relations with key energy buyers and as a result both are more interested in security of demand than in security of supply. They also face a number of similar energy challenges: the costs of operations have been rising, requiring savings on one hand and higher rates of recovery (currently 46% for the Norwegian continental shelf,² or NCS, and 31% in the case of Russian oil, which is tied to gas prices³). At the same time, the price of oil has fallen, meaning they are now 40–50% lower than the price required to balance their respective national budgets, heavily dependent on oil revenues. Another challenge is development of Arctic energy resources. The two countries jointly planned to develop the difficult-to-access Shtokman gas field in the Barents Sea but ended the project in 2012 when market conditions changed and made the whole undertaking economically unviable.

In both Norway and Russia, the state has firm control of the developments in energy sector through stakes in key energy companies and the power to set the regulatory framework. Norway owns 67% of the shares of Statoil, popularly recognised as its “national champion.” Statoil is a listed company that conducts global operations throughout the whole value chain. This can be contrasted with the other major Norwegian company, Petoro, which manages a third of the reserves on the Norwegian Continental Shelf (NCS), but its status and scope of operations are limited. It is a state-owned, limited-liability company subordinate to the Norwegian Ministry of Petroleum and Energy. It is the licensee acting on behalf of the state, managing the state’s “shares” in selected fields and in transmission on the NCS (so-called State’s Direct Financial Interests, or SDFI). Statoil and Petoro serve as guarantors of state budgetary stability, as they generate the majority of petroleum revenues through SDFI (Petoro), dividends (Statoil) and taxes (Statoil and other European companies). Statoil remains the main exporter and seller of gas on the NCS. It ranks second among the gas exporters to Europe,⁴ selling to the EU around 70–80% of all gas extracted from the NCS each year. It sells not only gas produced by the group but also third-party gas and gas sold on behalf of the SDFI. Statoil was established in the 1970s as a state-owned company to secure the state’s economic interests and control. It evolved behind the Norwegian borders with time and in the spirit of liberalisation and the internationalisation of its operations.⁵

In Russia, the state has a slight majority of the shares (50.23%) of the main gas producer, Gazprom, and 69.50% of the country’s main oil producer, Rosneft (through Rosneftegaz). However, the effects of the ownership in the energy sector and models of resource and revenues

¹ For more on that, see J.M. Godzimirski, “Strategie energetyczne Rosji i Norwegii: podobieństwa i różnice” [Energy strategies of Russia and Norway: similarities and differences], *Polski Przegląd Dyplomatyczny*, no. 4 (66), 2012, pp. 43–70.

² Data from 2011 at www.npd.no/en/Topics/Improved-Recovery/Temaartikler/Improved-recovery-without-side-effects.

³ R.F. Ministry of Energy, “Dokład i prezentatsiya k vystuplenyu zamestitelya Ministra Alekseya Tekslera na forumie TEK Rossii v XXI veke,” MinEnergo, Moscow, 2014, slide nr 11, <http://minenergo.gov.ru>.

⁴ Germany, France, Belgium, Italy, Netherlands, the UK, Czech Republic, Austria, Spain, Denmark, Ireland, Norway, Azerbaijan, Georgia, Turkey, and the U.S., Ukraine, and Lithuania.

⁵ The rest of the company’s upstream portfolio extends (into both, conventional, and unconventional petroleum) in Brazil, Angola, the U.S., UK continental shelf, Canada, Tanzania, Algeria, Australia, Colombia, New Zealand, and Myanmar.

management are not alike, mostly because the forms of statehood in Russia and in Norway differ greatly, but also because of the different political and business cultures present in both countries. As shown in an earlier analysis as part of the GoodGov project, the Norwegian model has the aim of benefitting society as a whole,⁶ whereas the Russian model is part of the political “grand gas strategy,”⁷ and is instrumentalised in relations with Moscow’s main gas “customer,” the European Union.

2.1. The EU–Norway Gas Relationship

2.1.1. Geography: Norwegian Gas as a “European Asset”

In many respects, gas from Norway is regarded as a European asset. Geographically, the network of 8,000 km of underwater pipelines links the gas-rich continental shelf of the North and Norwegian seas to the EU (*Appendix Figure Gassco Pipeline System*). Its capacity is almost fully used (102.6/120 bcm in 2014), with yearly fluctuations of around 5 bcm. Offshore infrastructure is regarded as too expensive to build if it cannot be used to its upper limits.

The gas deliveries are made directly to the EU market (Germany, the UK, and Belgium; see, *Appendix Figure: Norwegian Natural Gas Exports*), accounting for a quarter of the EU’s total gas consumption (and nearly 40% of imports). The EU-Norway gas routes have the luxury of independence from non-EU transit countries,⁸ and hence, the disruptions in deliveries are minor (the rate of deliverability by Norwegian national operator Gassco reached 99.92% in 2014) and when they do occur they result from technical problems.⁹ On the other hand, the EU has practical exclusivity to imports of Norwegian gas. The vast majority of the current gas reserves are linked to the pipeline exports, and all of Norway’s neighbours are EU or EEA members.

So far, the only extraction area physically “unlinked” from the European Union is the subarctic Barents Sea, and there infrastructure is anyhow underdeveloped Liquefied natural gas is mostly exported to the higher-earning Asian markets, although since last year with the opening of a floating LNG terminal in Lithuania, Norway gained another export destination.

Geographical distance will become a growing challenge for the security of gas supplies to the EU because Norway’s northern reservoirs—already some of the most logistically difficult to access—are considered to hold the largest amount of undiscovered gas (1.8 tcm; see, *Appendix Table: Original Recoverable Gas Resources on the Norwegian Continental Shelf*) compared to other prospective fields. Without significant new discoveries, should the Norwegian government’s prognosis of gas sales of 90–120 bcm prove correct,¹⁰ current gas reserves will cover around 16–20 years of exports. Bearing in mind that the last significant discovery of a gas field on the NCS was made in 1997 (“Ormen Lange” in the Norwegian Sea; See, *Appendix Table. Major Gas Fields*

⁶ For further information, please see the GoodGov project publication, L. Puka, O.-G. Austvik, A. Gawlikowska-Fyk, “Norwegian Energy Policy in the Changing EU Environment: What Poland Can Learn for Developing Its Shale Gas Industry,” *PISM Strategic File*, no. 4 (67), March 2015, http://goodgov.pism.pl/files/?id_plik=19359.

⁷ For further information, please see the GoodGov project publication, Z. Nowak, J. Ćwiek-Karpowicz, J. Godzimirski, “The Power to Influence Europe? Russia’s Grand Gas Strategy,” *PISM Strategic File*, no. 6 (69), March 2015, http://goodgov.pism.pl/files/?id_plik=19367.

⁸ See *Appendix*.

⁹ The information is fully transparent: http://flow.gassco.no/archive?page.page=2&page.sort=publ_end&page.sort.dir=DESC.

¹⁰ *The Norwegian Petroleum Sector: Facts 2014*, www.npd.no/Global/Engelsk/3-Publications/Facts/Facts2014/Facts_2014_netting.pdf.

on the Norwegian Continental Shelf),¹¹ much hope is vested in licenses from the little explored Barents Sea (albeit with high costs in environmentally and politically sensitive areas).

Notwithstanding the current geopolitical situation and its strained relations with Russia, the European Union wants to see an increase in supplies of Norwegian gas. Norway, however, has proved cautious about meeting this demand. Admittedly, the country already produces 30 bcm of gas each year more than it exports, though it re-injects it into the field to improve oil recovery rather than find another export destination. Moreover Statoil needs to reduce costs on exploration. Due to the recent drop in the price of oil, together with a continuous increase in production costs, Statoil generates much lower income (22 billion NOK, or about €2.5 billion, in 2014).¹² As a result, the success of the total exploration activity of the company in 2015 (planned at \$3.2 billion)¹³ will depend on stringent savings (of \$1.7 billion as of February 2015¹⁴). For these reasons, Norway simply aims at preserve the status quo and remain a “stable supplier” to the EU¹⁵ rather than edging to become the leader in gas deliveries to the EU let alone aggressively expanding to new markets.

2.1.2. Norms: From Opposition to Approximation

In a range of fields Norway has converged with EU regulations and has been a member of the Single Market since 1994 through the EEA agreement. It can therefore be considered an EU “insider:” a non-member currently bound by the majority of the legal *acquis*, including portions relevant to energy.¹⁶ During its drafting, the government did not expect the EEA agreement to have significant impact on the national energy sector, if any. Nevertheless, with the gradual development of EU energy policy, Norway has been more and more affected by policy it could not directly shape. Therefore, in the beginning, it opposed such changes. This opposition is unsurprising as the interests of Norway as a gas producer and exporter naturally differ from the interests of the EU as a gas consumer and importer. However, external conditions, such as the changing price of oil, and internal developments such as the maturing of the sector, and a government shift in the 1980s made some changes in the sector inevitable, and opened it up for competition.¹⁷ Therefore, Norway’s position has gradually evolved from confrontation in negotiations to “flexible adjustment”—the fulfilment of national/state interest within EU law.¹⁸

The most significant legal changes (such as gas sales and concessions) and their practical influence are described in detail in Chapter 3.3. Suffice it to say that Norway is now bound to apply general EU market liberalisation regulations (most importantly, the Third Energy Package) and adhere to competition and climate laws (including the Emissions Trading System regime).

¹¹ In oil, however, the largest find was in 2011, bringing up a positive prognosis for the sector. For details, see *Appendix*.

¹² Statoil, *Annual Report on Form 20-F 2014*, www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2014/Documents/DownloadCentreFiles/01_KeyDownloads/20-F_2014.pdf, p. 7.

¹³ *Ibidem*, p. 13.

¹⁴ *Ibidem*, p. 8.

¹⁵ L. Puka, “The Paradox of a Stable Supplier: Norway in the European Union’s Gas Strategy,” *PISM Bulletin*, no. 122 (717), 13 October 2014, <http://goodgov.pism.pl/publikacje/PISM-Bulletin-no-122-717>.

¹⁶ Compare the complex review of the influence of the agreements with the EU on Norway from 2012: *Utenfor og innenfor*, NOU 2012:2, p. 547, <https://www.regjeringen.no/nb/aktuelt/utenfor-og-innenfor/id696517>.

¹⁷ O.-G. Austvik, D.-H. Claes, *EOS-avtalen og norsk energipolitikk*, Rapport 8, Europautredningen, April 2011, p. 7.

¹⁸ L. Puka, A. Gawlikowska-Fyk, O.-G. Austvik, “Norwegian Energy Policy in the Changing EU Environment: What Poland Can Learn for Developing Its Shale Gas Industry,” *PISM Strategic File*, no. 4 (67), March 2015; http://goodgov.pism.pl/files/?id_plik=19359.

In broad terms, therefore, the transformation of the Norwegian gas sector has paralleled the process in the EU. Gas transportation in Norway is unbundled. Since 2003, the owner of the Norwegian gas transport and receiving infrastructure is Gassled. It is a joint venture owned by the relevant companies (45% belongs to Petoro, the licensee to manage Norway's direct financial interests, whereas Statoil has 5%).¹⁹ Since December 2002, non-discriminatory third-party access (TPA) to the pipeline system has been in effect. TPA also applies to Norway's Melkøya upstream LNG plant.

Still, it would be an exaggeration to look at Norway as an "EU member in all but name." The main handicap that stems from having EEA but not EU membership is the limited access to the EU legislative and governance process. It deprives Norway from voting and vetoing in the EU Council. However, Norway can merely conduct relations through active European policy on energy issues and by increasing the channels of communication. These include direct contacts with the Directorate-General for Energy, participation in working meetings in Brussels, organisation of Baltic-Nordic meetings before the EU Council, and cooperation with European companies that operate on the Norwegian shelf. Also, Norwegian companies and governmental and non-governmental organisations (NGOs) also have representations in Brussels to communicate their interests to EU stakeholders in the field of energy.

2.1.3. *Politics: Business First*

The EU and Norway refrain from describing their gas trade as a political tool, and, in their discourse, choose to refer to it as an economic product. From the EU's perspective, Norway is not considered a problematic partner—it conforms to internal market regulations and voluntarily aligns itself with EU foreign policy (outside of the EEA scope), which is a powerful trust-building measure between the two parties.

The alignment of actions beyond the narrow obligations of the EEA is also seen in the fact that Statoil has been a forerunner in introducing a hub-indexed pricing formula in its gas contracts. It is much in line with EU expectations, as a change in the pricing of traded gas (from oil escalation to gas-on-gas) reflects market fundamentals, in contrast to the determination of price by oil and its products. Since 2012, the pricing formula has been changed, at least partially, in contracts with key importers in Germany, Belgium, the Netherlands and the United Kingdom (including Wintershall, E.ON, RWE, GDF and Gesterra).²⁰ In 2013, moreover, Italy's ENI sought arbitration of a contract concluded in 1997 with Statoil in which the price was based on oil-indexation on the grounds of increased competition in Italy. Still, the case was settled a year later.²¹

The Norwegian state budget and the operations of its "national champion," Statoil, depend heavily on the sale of gas to the EU. Overall, revenues from gas constitute about half of the state's petroleum incomes. As such, they form a quarter of the country's total exports, 10% of its GDP, and 14% of state revenues.²² Indirectly, they contribute to balancing the budget through the sovereign

¹⁹ Data from the Petoro website: <https://www.gassco.no/en/about-gassco/gassled-eng>.

²⁰ L. Franza, "Long-term Gas Import Contracts in Europe: The Evolution in Pricing Mechanisms," CIEP Paper 2015/08, www.clingendaelenergy.com/inc/upload/files/Ciep_paper_2014-08_web_1.pdf.

²¹ In response to that, Gazprom accused Statoil of losing market share, "Eni signs final agreement with Statoil on revision of terms in long-term gas supply contracts," ENI, 31 March 2014, www.eni.com/en_IT/media/press-releases/2014/03/2014-03-31-eni-signs-final-agreement-statoil.shtml; "Eni may seek up to \$10 billion from Statoil in gas dispute," Reuters, 28 November 2013, www.reuters.com/article/2013/11/28/us-eni-statoil-idUSBRE9AR0MP20131128.

²² In the official statistics and state budget, "petroleum revenues" are a joint category. The estimate of 50% is a share of revenues from gas (volume of sales, times the average price of gas in Europe in 2014 as stated in the Norwegian State Budget 2015 for 2014 data; Norwegian Ministry of Finance; www.statsbudsjettet.no/upload/Revidert_2015/dokumenter/tallene/kap2.htm) and in the total revenues from sales (after the Ministry of Petroleum and Energy and Norwegian Petroleum Directorate; www.norskpetroleum.no/en/economy/exports-norwegian-oil-and-gas/#natural-gas).

wealth fund (the Government Pension Fund Global, which has a value of 6.9 billion NOK, or about €760 billion,²³ a maximum of 4% of which can be spent in a single fiscal budget²⁴). The EU market remains the most important demand centre for Statoil, with average gas prices in 2014 two times higher than in the U.S.

Nevertheless, Norwegian compliance with the EU norms do have a political limit—the country needs to balance its interests vis-à-vis the vital interest of the neighbouring superpower. If it expands too rapidly it would undermine Russian interests and could have a negative impact on the Norway's security. Norway fears that Russian countermeasures could, for example, spill over into such areas as the disputed status of Svalbard. Norway, therefore, rejected a 2006–2007 proposal by some EU Member States to increase gas supplies to the EU so that the bloc could reduce its dependence on Russia.²⁵ As noted above, this decision also had an economic rationale—with the exploitation of reserves, the investment in doubling export volumes would have added little economic value and would have put the security of its five million people at risk.

These political redlines are not set in stone. The cuts in Russian gas supplies to Ukraine combined with its military intervention in 2014 did encourage a slight shift in attitude from Norway. Both the government in Oslo and Statoil carefully underlined that Norwegian gas would not replace Russian gas; nevertheless, the company did launch sales on two new markets heavily dependent on Russian gas. Norway first started supplying Lithuania with a small amount of LNG and then Ukraine in the form of swap contracts and gas purchases in hubs.²⁶ Still, Norway has avoided linking gas exports to foreign policy. Statoil's actions in this case, are not only moderate but can also be justified in purely economic terms.

In sum, the cooperation between Norway and the EU has been perceived by both sides to be one of mutual benefits and generally consensual. The parties share common values and regulations, which enhances trust between them and improves the security of supply. What the EU expects, however, is even more exports from Norway, whereas for Norway the missing element remains reliable gas demand and greater market integration within the EU.

2.2. The EU–Russia Gas Relationship

2.2.1. Geography: Near and Yet so Far

Following the cooling of political relations in 2013, it has often been pointed out that the EU's political centre—Brussels—is a sizeable 2,500 kilometres from Moscow. The gas links between the EU and Russia are tighter but they can be similarly expressed in kilometres as the distance that the gas coming from Russian fields must travel before reaching the European market. Russia owns huge reserves of gas (almost 50 tcm), located in several parts of its territory and abroad;²⁷ nevertheless, it is mainly those situated in western and northwestern Siberia that are currently (and in the near future) intended for export to the EU. Among Russia's most important European clients are Germany, Italy, Poland, France, Belgium, Czech Republic, Hungary, Austria, Slovakia, Finland, Greece and the Netherlands.

²³ As of 9 June 2015, www.nbim.no/en/the-fund/market-value/key-figures.

²⁴ *Retningslinjer for bruk av oljepenger (handlingsregelen)*, https://www.regjeringen.no/nb/tema/okonomi-og-budsjett/norsk_okonomi/bruk-av-oljepenger-/retningslinjer-for-bruk-av-oljepenger-ha/id450468.

²⁵ *Utenfor og innenfor*, *op. cit.*, p. 547.

²⁶ L. Puka, "The Paradox of a Stable Supplier ...," *op. cit.*

²⁷ Gazprom data, "Gazprom deposits," www.gazprom.com/about/production/projects/deposits.

The key Russian gas supply routes remain land pipelines, which are well diversified. The Brotherhood pipeline that goes from Urengoy (Russia) to Uzhgorod (Ukraine) is almost 4,500 km long. After reaching Uzhgorod, it then continues for 450 km across Slovakia, where it splits in two: one route goes towards the Czech Republic and the other towards Austria, and onward to Italy. The Uzhgorod station is also the EU entry point for gas from Soyuz, the 2,750 km pipeline that begins in Orenburg. The Northern Lights pipeline, meanwhile, has a total length of 7,377 km and supplies Finland, Latvia, Lithuania and Estonia with gas coming from Urengoy. The parallel Yamal pipeline is around 2,000 km and runs from Torzhok in Russia across Belarus, through Poland, towards Germany. Despite its name, gas in the Yamal pipeline will continue to originate from Tyumen Oblast as long as the Bovanenkov-Ukhta pipeline is not fully commissioned. Another pipeline, the so-called Balkan Corridor, transits through Ukraine and Moldova to reach Romania, Bulgaria and Greece (*Appendix Table: Outlet Capacity of Export Pipelines at the FSU Border, bcm/year; Map: Major Gas Pipelines of the Former Soviet Union*).

Before the collapse of the USSR, pipelines constituted a rare and direct link between the Western and Eastern world, with the first gas deal signed in 1969 between Italy's ENI and the Soviet Union. The collapse of the USSR, subsequent independence of its republics, enlargement of the EU, emergence of alternative suppliers for Western Europe, fresh political winds and new political alliances made the European market roll away from the Russian gas fields. Although EU dependence on imports of Russian gas increased at that time in both absolute and relative terms,²⁸ Russian gas has been gradually perceived as neither the first nor the best option.

Western countries in the Commonwealth of Independent States—Belarus, Ukraine and Moldova—have significance as non-EU transit countries on the route from Russia to Europe. Their impact on the security of gas supply to Europe can be determined from a combination of their attitudes towards Russia and the existing regulatory and contractual framework. In the case of pro-Russia Belarus, as the name Gazprom Transgaz Belarus indicates, the gas transportation company is 100% owned by Russia. In Moldova, the entity responsible for transit is Moldovagaz, a joint Moldovan-Russian company set up in a three-way arrangement between Gazprom (50% stake), the Moldovan government (36.6%) and the Ministry of Industry of the breakaway region Transnistria (13.4%). In Ukraine, Ukrtransgaz (a subsidiary of Naftogaz) operates all transit pipelines; nevertheless, the delivery points to the EU on the Ukrainian border are controlled by Gazprom. Also, the transit contract between Ukraine and Russia is currently subject to an appeal in the Stockholm arbitration court.

Reliance on relatively unstable transit countries (even if some, such as Ukraine and Moldova, aspire to become reliable partners through the Energy Community) makes the security of gas supply to Europe vulnerable, a fact that was particularly underscored in the EU Gas Stress Tests results.²⁹ The main conclusion stemming from the Commission's test results was that the EU-28 needed to achieve greater solidarity amongst themselves and greater diversification amongst their suppliers.

Russia has proposed and indeed has already implemented the remedy as it sees fit: diversification of supply routes. Its idea is to choose the most direct (but also more costly) option of building seabed pipelines that should be less charged with transit issues. A consortium composed of Gazprom (51% of shares), Wintershall (15.5%), E.ON Ruhrgas (15.5%), N.V. Nederlandse Gasunie (9%) and GDF Suez (9%) constructed in 2011 and 2012 the 1,222 km long, two-line,

²⁸ R. Dickel et al., *Reducing European Dependence on Russian Gas*, OIES Paper NG 92, The Oxford Institute for Energy Studies, 2014, p. 7, www.oxfordenergy.org/wpcms/wp-content/uploads/2014/10/NG-92.pdf.

²⁹ *Communication from the Commission to the European Parliament and the Council on the short term resilience of the European gas system. Preparedness for a possible disruption of supplies from the East during the fall and winter of 2014/2015*, Brussels, 16 October 2014, COM(2014) 654 final, https://ec.europa.eu/energy/sites/ener/files/documents/2014_stresstests_com_en_0.pdf.

underwater Nord Stream pipeline from Russia's Vyborg to Germany's Greifswald, and in so doing bypassed traditional transit countries. This option still requires the acquiescence of countries' whose economic zones are transited and is, second, exposed to natural environmental risks.

Currently, three new supply routes designed to minimise transit risk are under consideration: Turkish Stream (replacing the cancelled South Stream), new lines of Nord Stream, and LNG connections. They all would allow Russia to enhance its presence on the European swap market. All these projects are still in their initial phases, but, without a doubt, each and every one of them would incur huge costs. Despite that and the numerous controversies they raise, these Russian initiatives find sympathetic ears among EU Member States that stand to gain most.

2.2.2. Norms: High Legal Ambitions, Base Contractual Reality

EU legislation is binding on the EU Member States, the contracts that their entities sign with external suppliers must also, in turn, respect internal market rules. Today, Russian suppliers, including Gazprom, thus find themselves negotiating within the framework of EU competition law and other internal market rules. This marks something of a change.

Before the end of the bipolar world order in the early 1990s, individual European Community member states concluded contractual energy arrangements directly with Russia (as the organisation had no relevant competences). A network of state-to-state partnerships, was thus established between individual Western European countries and Russia. Similarly, the Eastern Bloc countries had individual preferential agreements on gas supply and transit. However, the two-dimensional (broad and deep) extension of the EU gradually imposed a set of economic, legal and political filters on these direct bilateral relationships, making Russia a de facto outsider to the European market, and hence a subject of EU external policy.

In the early stages of market-building, the EU believed that Russia, struggling in the 1990s with its internal crises, would be receptive to the European power of attraction. It quickly became clear, however, that Russia did not want to be perceived as a junior partner or fosterling of Europe's "united in diversity" slogans but preferred to be treated as an equal and serious partner. Russia was well aware of its status as the EU's primary source of gas and as a country abundantly endowed with hydrocarbons. The EU had also been banking on its own internal solidarity and had discounted the legacy of the earlier practice of direct cooperation with Russia.

Yet, in the urgent need to systematise relations with Russia, the EU proposed several legally binding cooperation frameworks. They were filled with common ambitious visions but lacked large-scale practical and effective implementation tools. Among them were the Partnership and Cooperation Agreement (1994), the Four Common Spaces (2003), and the EU–Russia Partnership for Modernisation (2010). Simultaneously, the EU and Russia engaged in various international forums created by functional organisations linked with energy policy, such as the Northern Dimension, Black Sea Synergy, or Energy Charter, but these have had only limited scope and impact. In the meantime, the Energy Dialogue between the European Commission's DG Energy and the Russian Ministry of Energy was set up as a topical platform (one that included natural gas), held once or twice a year, for exchanges and cooperation in the energy field.

Besides strengthening its energy policy towards Russia, the EU has simultaneously begun to reinforce its internal gas market through a set of regulations. Art. 194 TFEU prescribed solidarity in the internal energy market. This gave the EU has found the tools to even up its gas relationship with Russia and other suppliers, but on European territory. The EU liberalisation regulations, specifically the reciprocity clause, target Gazprom as much as any other company acting on the European internal gas market. Nicknamed the "Gazprom clause," the regulation protects the openness of the EU gas market through unbundling rules as well as aims to ensure community

control over transmission system operators. However, these requirements remain at odds with the well-established system of the Russian monopoly. As a consequence, the EU internal market regulations are constantly challenged by Russian manoeuvres of interpretation concerning its business with European energy companies. The EU's Third Energy Package has even been called into question by Russia before the WTO, where a dispute settlement panel will be established to rule on Russia's complaints.

Furthermore, Member State bilateralism incessantly prevails over common European approach in terms of legal cooperation with Russia. Member States' continued resort to bilateralism with Russia is defined by three main factors. First, historically, EU members have been signing bilateral gas agreements with Russia, usually after a long period of negotiations and, frequently, as part of larger packages of political-economic deals, and hence ensuring confidentiality. Second, Member States have signed up to long-term, inflexible contracts in consideration of giant pipeline costs, as well as the bilateral goal of ensuring a secure gas supply in exchange for projected revenue flows to Russia. Third, and against the logic of basic pipeline economics, it is the most distant EU Member States that have gained the best gas prices from Russia. This explains why western EU countries have tended to prefer bilateral arrangements, to the dissatisfaction of the EU's newcomers, which are mostly dependent on Russian gas.

Finally, besides the EU institutions (overseeing market functioning) and national governments (aiming for their own interests), the responsibility for dealing with Gazprom lies with European companies, which have the primary aim of profit. The degree of deregulation of a Member State's internal gas market varies greatly. Only in liberalised domestic regimes do liquid gas exchanges and numerous companies compete. A final issue is an EU-wide trend: the number of actors involved in contract negotiations on the European side has increased constantly.

The multiplication of actors on the European side meets disciplined Russian consistency on the other (the former Ministry of Gas Industry was effectively transformed into Gazprom, with the effect of retaining as much political influence). This complicates attempts at bringing legal or contractual clarity to the direct EU–Russia gas relationship.

2.2.3. *Politics: Politics Is Business*

The overarching goal for the EU's energy policy (applicable also to the gas sector) remains threefold: sustainability, competitiveness and security of supply. By contrast, Russia's actions are driven by security of demand and political influence. Russian gas activity in Europe is, indeed, often perceived as the opposite of trust building and is analysed in terms of Russian expansionism. For their part, European companies enjoy only limited access to the Russian market. This is not only due to Russia's shrinking economy and sanctions but also mainly to its typical business preference for few external actors, alongside the lack of commercial transparency, and political rapacity over economic endeavours. Gazprom hardly counts as the most reliable of partners, either. "Nowadays, Gazprom's market value is the worst in its history; at the end of 2014 it was ranked 184th (\$51 billion), due to excessive debts, the falling value of the rouble, and some poorly calculated projects."³⁰

Hence, the EU–Russian gas "partnership" is based primarily on painful necessity, and a basic supply-demand balance is currently the strongest bridge of cooperation between Europe and Russia, as the first needs gas and the latter needs revenues. This partnership, based on painful necessity rather than on voluntary win-win cooperation, is best expressed in numbers: in 2013, the EU imported 139 bcm of gas from Russia, which constituted around 70% of Russia's total gas exports and 10% of its budget revenues. In general, "Russia's share of EU-28 imports of

³⁰ Z. Nowak, J. Ćwiek-Karpowicz, J. Godzimirski, *op. cit.*

natural gas declined from 44.8% to 30.1% between 2003 and 2010, but this development was reversed with increases thereafter leading to a share of 39.3% in 2013.³¹ After a slight recovery in the years 2010-2013, one can expect a renewed slowdown in gas imports to Europe in relative values—especially because of the Ukraine-Russia crisis offspring: EU diversification policy. Still, in absolute values and in the longer term, the import of Russian gas may even increase as the EU's gas import dependency is expected to rise from 66% to 84% in 2035³² due to an increase in power demand and declining European gas production.

The internal disparity of gas consumption, the volumes purchased from Russia, as well as other commercial interests make the EU picture much more complicated. Several countries, such as Ireland, Croatia, the UK, Malta or Portugal, do not import gas from Russia directly. On the other side of the scale, there are countries heavily dependent on Russian gas (i.e., over 60% of supplies): Finland, Hungary, Slovakia, Poland, Bulgaria, Czech Republic, Estonia, and, until the opening of the Klaipeda LNG terminal, Lithuania. Other EU Member States are in between, thanks to their ability to satisfy their gas needs from other sources, their important storage capacity. And still others depend heavily on Russian gas but mitigate this risk thanks to their privileged political relations to Moscow.³³

As a consequence, “diversification” means something rather different for each Member State. For Bulgaria or Poland it means a reduction of Russian gas in the domestic energy mix, while for such countries as the UK or the Netherlands, diversification may mean exactly the opposite—attraction of Russian gas to their gas markets, which are, at the moment, relatively free of Russian influence. Furthermore, eastern EU Member States are transit countries for Russian piped gas, something which constitutes an important source of revenue for them, and one which they would not like to see decreased (as with the case of Polish multipurpose discontentment with Nord Stream construction).

Moreover, some Member States' strategic national industries are gas-dependent and thus lobby their governments to maintain a good (or at least a seemingly correct) level of cooperation with Russia, despite general EU policy. As a consequence, circles of rather pro-Russian companies and governments exist in Europe, some of which engage in projects with Russia that hold EU-wide importance, e.g., Germany's E.ON, British firm Dutch Royal Dutch Shell and Austrian company OMV, which intend to construct new lines of the Nord Stream pipeline; others include Hungary and Greece, together with Serbia, Macedonia and Turkey, which have declared they will carry out Russia's Turkish Stream project. By contrast, other countries and their national gas corporate representatives, such as Poland or Lithuania, commit by all means (e.g., LNG terminal construction) to loosen their ties with Russia. The politicisation of Russian gas activity in Europe increases with Gazprom's amplified presence in the European gas market downstream and attempts at acquisition of strategic infrastructure assets (such as UGS in Reden, Germany). Gazprom's subsidiaries and related entities are also politically active in Member States (sponsoring think-tanks, groups of green or anti-fracking activists, etc.) raise political alertness in Europe.

The 2013 *Roadmap on EU-Russia Energy Cooperation until 2050* identified risks in the EU-Russia gas relationship and determined that cooperation was the solution: “the target for strategic cooperation in the gas sector includes developing a Pan-European gas infrastructure and building open, transparent, efficient and competitive gas markets, where any producers (including Russia) will be able to sell, and consumers to buy gas without any artificial trade barriers and

³¹ Eurostat, “Energy production and imports,” http://ec.europa.eu/eurostat/statistics-explained/index.php/Energy_production_and_imports.

³² BP Outlook, “Regional Insights the European Union 2035,” www.bp.com/content/dam/bp/pdf/Energy-economics/Energy-Outlook/Regional_insights_European_Union_2035.pdf.

³³ C.-K. Chyong, V. Tcherneva, “Europe's vulnerability on Russian gas, Commentary,” ECFR, 17 March 2015, www.ecfr.eu/article/commentary_europes_vulnerability_on_russian_gas.

discriminating rules, at any delivery point and at a fair price.”³⁴ This happy sentence neatly reconciled the EU’s energy interests with Russia’s main preoccupations. But predictably, the subsequent transition from theory to reality proved hard. The Ukraine crisis has highlighted the relevance of the principle of cooperation but also revealed the lack of practical thinking behind previous common declarations. Once again, politics overtook economics.

2.3. Comparing Suppliers: Norway and Russia Go Head to Head

This comparison of the three crucial factors in the EU’s gas relations with Norway and Russia spawns the following basic conclusions:

First, Norway has increasingly sought closer cooperation with the European Union—consenting to the changing rules of the game rather than opposing them, and finding a way to insert its interests. To the contrary, Russia has objected to the EU’s regulatory power and its attempts to determine the future shape of the internal market. Whilst the Russian approach has not derailed, the integration processes within the EU, it has gradually weakened the trust between all parties.

Second, the legal and political rapprochement with the EU has benefited Norway. Despite limitations to its production and transmission capacities, it has increased its European market share. Russia’s approach, by contrast, has backfired. It is pushing to increase its (already abundant) transmission capacity to Europe as well as gas production, but retaining its market share is in question. Russia depends on its privileged relations with selected governments and customers but these remain fragile to external conditions (e.g., sanctions). As the case of Lithuania (and also Ukraine) shows, some European customers are also willing to pay a higher price for an alternative gas supply to diminish their exposure to Gazprom.

Third, whereas the EU and Norway see energy relations as a win-win game, based on trust, EU-Russia relations are little more than a marriage of by necessity and are burdened by Russia’s pursuit of Grand Strategy, where one side has to lose so that the other can win.

Norway manages to pursue direct relations with customers in the Member States without hampering the overall development of the EU gas policy, whereas Russia’s bilateral relations aim to weaken the European gas market model.

³⁴ *Roadmap: EU–Russia Energy Cooperation until 2050*, March 2013, https://ec.europa.eu/energy/sites/ener/files/documents/2013_03_eu_russia_roadmap_2050_signed.pdf.

3. The EU in Action—Same Rules for Norwegian and Russian Champions?

Although the EC is not directly mandated to act in the field of external EU energy policy, it is making good use of its competition competences to set the rules of the “gas game.” The ability to influence either business models or long-term supply contracts with external entities may be seen as an important tool in forming an external dimension of EU energy policy. It is worth underlining that the ultimate goal of the EU’s normative-competition approach is to create a fully-fledged energy market in the EU. This approach, however, will only work, without the backing of brute political and financial power, if it is perceived as fair and predictable. The comparison of Statoil and Gazprom in the field will thus support making a judgement about equal treatment of both suppliers, which seems crucial to an effective normative-competition approach. The question is whether the EU’s normative power allows dealings with external suppliers, thus allows it to influence the rules of the gas game, or if the EU should go beyond its current mode of operation.

3.1. The EU Energy Toolkit

The evolution of European Union energy policy has been unusual from its outset. The EU has entered the energy field indirectly and has tried to influence it via its competences in other policy areas: climate policy and competition law. This oblique approach has left its mark on the EU’s regulation of gas—but not always in logical ways. Under its climate policy, the EU could, in theory, have treated gas as a “transition fuel” because it is cleaner than coal. This argument has indeed been raised numerous times by Norway (which is a party to EU climate policy), as it could secure the EU demand for gas. In practice, however, EU climate policy has not increased the market for gas due to the continued competitiveness of coal. But nor has it closed gas out of the EU energy mix, despite the status of gas as a polluting fossil fuel. The technical and political feasibility of the endeavour would be highly questionable for several reasons. First, gas is used in the EU as feedstock and as a primary source of generation of electricity and heat; it would be extremely costly to replace it with renewables. Second, there is political opposition, observed in the 2030 climate and energy package debate, from a group of Member States against a full-scale transition and in the run-up to the pending discussion on ETS reform.

By contrast, competition law has proved to be a much stronger tool in EU hands, with direct influence on the gas trade. It has served as a measure to balance EU relations with Statoil and Gazprom.

3.2. EU Competition Law in Action

Competition rules are one of the policy domain where the EU has powerful tools at its disposal and a strong track record in their application. Yet, in the energy sector, it was not until the 2000s that the Commission started employing those tools. Decisions concerning dismantling national export and import monopolies, antitrust cases (long-term capacity bookings, unbundling), mergers (EDP/GDP/ENI case) or state aid, let alone energy sector inquiry (2005–2007), marked a real change. Between 2001 and 2007, the Commission succeeded in ruling out destination clauses from contracts between external gas suppliers and European gas buyers. Those clauses blocked the possibility for customers in the EU to resell gas beyond strictly defined areas, usually limited to national borders. These cases involved Statoil and Norsk Hydro as well as contracts between Gazprom and ENI, OMV and E.ON Ruhrgas.

The European Commission pursued this liberalisation in parallel with greater competition (by the means of the first, second and current third energy packages). It hoped that this combination

would pave the way for a single European energy market. Due to historical, economic and political factors, however, this was by no means a foregone conclusion. When trying to alter businesses (incumbents, often national champions), the Commission has faced opposition, quite often backed by their Member States. Gazprom and the Russian authorities have reacted in a similar manner, clearly visible now in an ongoing antitrust case, but was also apparent in those earlier cases involving Statoil and Norway.

Each and every company that has been subject to an EU competition case was in effect confronted over its business model. The Commission was very successful in this field and has never lost a case at the stage of a formal proceeding before the Court of Justice of the EU. It should not come as a surprise, therefore, that third-country businesses resisted, claiming that they were not beholden to EU jurisdiction.

3.3. The EU's Influence on Statoil

The EEA agreement and EU competition rules were just some of the factors that triggered changes in Norwegian gas sales, among many others, which included the changing price of oil, maturation of the sector, and the above-mentioned government shift in the 1980s. The reactions of the Norwegian government ranged from outright opposition through negotiated engagement to “flexible adjustment”—the fulfilment of national and state interests within EU law.

Statoil was one of the first non-EU suppliers targeted by the EC's intervention in the energy sector. Indeed, from the 1990s, Statoil was the subject of virtually every possible type of competition case. The EU wanted to ensure for itself access to concessions offered to firms operating on the NCS; reduce Statoil's privileges; dismantle its export monopoly; question its operations outside of the country; and approve its mergers.

3.3.1. *The EU Liberalises Access to Exploration Licenses and Reduces Statoil's Privileges*

Even before Norway joined the EEA, the EU had been seeking better access to the NCS and to secure equal conditions for companies operating there. In 1994 the EU agreed on a directive for non-discriminatory access to licenses for the exploration of hydrocarbons (Directive 94/22/EC). Initially, Norway opposed these changes, despite the fact that some of the proposed principles had long been entrenched in the EU's broader market rules: the directive would mean lifting a compulsory 50% stake in any extraction.

It would also mean Statoil's exemption from the costs of exploration (under the “carried interest rule,” *Baerings prinsippet*). From an EU perspective, however, the timing of the negotiations on the directive was propitious: Norway anticipated to soon become an EU member and proved to be pliant. Moreover, Oslo was ready to reassess the stipulation about Statoil's 50% stake. This measure had been introduced in the 1970s in the heyday of Statoil's operations as a way of rewarding the company and ensuring state control over the sector. With the maturation of the sector two decades later, the rule was hampering the company's investment flexibility. Statoil's exemption from exploration costs was also lifted, with an aim to attract foreign investors to the NCS, at a time of increased global competition in gas markets.³⁵

³⁵ *Utenfor og innenfor, op. cit.*, p. 548.

3.3.2. *The EU's Role in Dismantling the Norwegian Cartel for Gas Sales*

A prime illustration of the changes triggered by EEA/EU law was the Commission's case against Norway's centralised sales monopoly, Gassforhandlingsutvalget (GFU). The monopoly had been formed by the Norwegian state in 1986 and had been led by Statoil and two other Norwegian companies—Norsk Hydro and Saga Petroleum. GFU was the intermediary between the state and purchasers. At the time of low oil prices in the 1980s, this was a way to counterbalance the powerful group of buyers on the European side (Ruhrgas, Gasunie, Gaz de France). It was meant to prevent gas oversupply on the EU market and to avoid a situation in which the same company would sit on both sides of the negotiating table (as purchasers and producers on the NCS).

Norway's model, however, was far from the spirit of competition. The initial opposition came from the companies operating on the NCS (after which they were given the concession of a case-by-case advisory role in sales negotiations). Second, more opposition came from the international purchasers. German Wingas opposed the inability to purchase Norwegian gas from GFU. Wingas approached Norway's Saga Petroleum, but the company withdrew after pressure from Statoil and Hydro, which wanted to avoid competition on the German market. The case was then directed to the European Commission in 1996 and it was put in queue. The Commission wanted first to see the effects of the first package of liberalisation directives which included not just the licensing directive but basic rules for dismantling monopolies.

The issue returned in 2001 on a much bigger scale: in July, the Commission initiated formal proceedings against approximately 30 Norwegian gas companies, arguing that the GFU scheme, as a price- and quantities-setting cartel, was incompatible with EU competition laws. The potential fine on the companies would have come to 40–50 billion NOK. Fearing penalty, the companies operating on the NCS exerted “pressure from inside” on the Norwegian government, and a week before the case was formally launched, the GFU was dismantled. Then, in July 2002, to avoid negative consequences of the long-term contracts already signed, the Commission settled the dispute. In the settlement, Statoil and Hydro committed to offer the EU markets 5% of the then-total volumes of sales of Norwegian gas (13 bcm and 2.2 bcm, respectively) by 2005. Although the Commission initially aimed to dismantle the Norwegian export monopoly, the postponement of the case until implementation of the first energy package allowed the resolution of other anticompetitive issues. On the sidelines of the case, still in the spotlight, the companies promised not to use territorial sales restrictions.³⁶ During the talks, Norway also accepted third-party access to its gas transmission.³⁷ Hence, although the practical consequences of the dismantling of GFU were limited, as Statoil has maintained 70% of sales of gas from the NCS, aligning Norwegian supplies with the first energy package allowed for smoother EU–Norway gas cooperation.

3.3.3. *The Commission's Handling of Statoil's Entry to the Irish Market*

The Commission looked closer at Statoil's plans to expand onto the Irish market. Statoil was not treated differently to EU companies in this respect. At that time, the incumbent players in the Irish market were Bord Gais Eirean (BGE) and the Electricity Supply Board (ESB). Statoil had brought two antitrust proceedings in order to gain access to privileged conditions to sell its gas in Ireland and to enter the country's electricity market.

At first, in 2000, Statoil did not succeed in acquiring an exemption to sell its gas (extracted from the Irish Corrib field) jointly with Enterprise Energy Ireland Limited and Marathon, and

³⁶ “Commission successfully settles GFU case with Norwegian gas producers,” IP/02/1084, 17 July 2002, http://europa.eu/rapid/press-release_IP-02-1084_en.htm.

³⁷ O.-G. Austvik, D.-H. Clæs, *op. cit.*, p. 29.

withdrew the application a year later.³⁸ Instead, it chose to cooperate with the Irish incumbent but with an aim to increase competition. In May 2002, the Commission sanctioned a joint venture between Statoil (30%) and ESB (70%). The aim of a joint venture, Synergen, was to build and run a gas-fired power plant. The Commission's decision was conditional—the venture had to contribute to developing the Irish electricity market. Specifically, this included selling half of Synergen and ESB electricity through bilateral contracts and at auction. At the same time, however, the Commission deemed 15-year exclusive contract for Statoil to deliver gas to Synergen acceptable, since Statoil was a “new entrant” (in a gas market was dominated by BGE).

3.3.4. *The EU's Control of Statoil's Mergers and Acquisitions*

Another area of EU influence on the corporate plans of Statoil, as with all other companies, is in mergers and acquisitions. Based on the EEA agreement, Statoil has had to notify proposed operations in exploration and production in other countries (such as in a 2007 merger between Statoil and Hydro³⁹ and with BP and Sonatrach, in 2003, in the In Salah field⁴⁰) but also in distribution and sales in Scandinavia (acquisition of ConocoPhillips' network of “Jet” stations in Scandinavia, subject to significant divestment in 2008,⁴¹ or acquisition of an aviation refuelling company in Finland⁴²).

3.4. Gazprom in the EU Spotlight

The recently launched antitrust case against Gazprom was not the first against Russian gas company based on EU competition law. Quite the opposite: so far, the EU's executive has conducted several cases regarding Gazprom (or its subsidiaries) just as it has with Statoil. Their impact on Gazprom's business practices, however, was much smaller than the above-presented EU interference with Statoil.

3.4.1. *Enhancing Gas Resale in Western Europe*

In the pursuit of creating an internal gas market, from 2001 (and hence, just a couple of months after the deadline for implementation of the first gas directive) the Commission's DG Competition started to scrutinise a number of supply contracts between Gazprom and its gas customers to remove contractual clauses that violated EU norms. In 2003, the Commission decided to tackle a supply contract between the Russian supplier and Italian oil and gas company ENI. The main issue was a provision preventing ENI from reselling Gazprom's gas abroad. A settlement was swiftly reached and Gazprom even received some reciprocal easing: it got the freedom to offer its gas to other Italian customers without ENI's prior consent.⁴³ The Commission underlined that the case marked an important milestone in the enforcement of competition rules and in creating

³⁸ “Enterprise Oil, Statoil and Marathon to market Irish Corrib gas separately,” IP/01/578, 20 April 2001, http://europa.eu/rapid/press-release_IP-01-578_en.htm?locale=en.

³⁹ “Mergers: Commission approves proposed merger between Statoil and Hydro,” IP/07/606, 3 May 2007, http://europa.eu/rapid/press-release_IP-07-606_en.htm.

⁴⁰ “Commission clears Statoil stake in BP-Sonatrach In Salah natural gas joint venture,” IP/03/1785, 19 December 2003, http://europa.eu/rapid/press-release_IP-03-1785_en.htm.

⁴¹ “Mergers: Commission clears StatoilHydro's proposed acquisition of Jet Scandinavia, subject to conditions,” IP/08/1556, 21 October 2008, http://europa.eu/rapid/press-release_IP-08-1556_en.htm.

⁴² “Mergers: Commission approves proposed acquisition of St1Avifuels by StatoilHydro and St1,” IP/08/2052, 22 December 2008, http://europa.eu/rapid/press-release_IP-08-2052_en.htm.

⁴³ “Commission reaches breakthrough with Gazprom and ENI on territorial restriction clauses,” IP/03/1345, 6 October 2003, http://europa.eu/rapid/press-release_IP-03-1345_en.htm?locale=en.

(then in its infancy) the EU gas market. It also promised further actions to target restrictive clauses between Gazprom and its EU customers. And, indeed, a similar outcome was reached two years later between Gazprom and Austrian oil and gas company OMV⁴⁴, and later, in 2007, between Gazprom and Germany's E.ON Ruhrgas.

3.4.2. Merger Control

Gazprom's merger strategy on the EU market has been subject to a few proceedings: Gazprom Finance B.V. and JSC Sibneft (2005); Gazprom Germania GmbH, A2A S.p.A. and PremiumGas S.p.A. (2010); Gazprom Schweiz and Promgas S.p.A. (2011); Gazprom, Wintershall and Target Companies (2013); and, Gazprom, Fortum Corporation, AS Eesti Gaas and AS Vörguteenus Valdus (2014).⁴⁵ In each case, the Commission declared that the proposed concentration was compatible with EU law, leaving intact Gazprom's downstream activities in the EU.

3.4.3. Alleged Antitrust Practices in Central and Eastern Europe

In April 2015, after almost three years of investigations, the Commission formally opened proceedings against Gazprom, alleging that the Russian giant consistently abused its dominant position on the Central and Eastern European gas markets. The Commission put forward three objections: 1) hindering cross-border gas sales; 2) charging unfair prices; and 3) making gas supplies conditional on obtaining unrelated commitments from wholesalers concerning gas import infrastructure. Gazprom's activities were seen as anti-competitive in eight Member States (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia), where the Russian gas market share ranges from 50% to 100%.

The case was brought to the Commission's attention in 2007 by one of those eight countries—Lithuania. The process of collecting information and evidence started in 2011 and was not confined to Lithuania (there were a series of dawn raid of Gazprom-linked offices and its trade counterparts, i.e., the Polish company PGNiG). The Commission took a broad perspective, aiming to scrutinise the terms of Russian gas supplies to a full range of "new" Member States that entered the EU in 2004 and 2007. The formal investigation started in August 2012. Although there were some hopes of settlement signalled by Russia,⁴⁶ Gazprom was not keen on admitting practices of unfair gas pricing and eventually, since such allegations had not been resolved, the Commission decided to send the Russian giant a formal statement of objections (April 2015). It is worth underlining that, with the backdrop of EU-Russia talks, Statoil has decided to abandon oil price escalation formulas in each and every contract with European buyers.

Compared to Gazprom's other encounters with EU competition rules the recent antitrust case, however, bears special features. First, it touches upon the very core of Gazprom's gas-to-oil pricing, a practice which, generally speaking, allows it to maximise gas prices. And, for that reason, in contrast to previous cases, this one has not been settled so far as Gazprom is not game (or even ready) to change its practices. Second, the proceeding takes place against the backdrop of the Ukraine-Russia crisis, which also has gas disputes at its core.

Competition rules are not the only bone of contention between the Russian giant and EU authorities: the third energy package is also hotly disputed. In 2009, the EU decided to extend the

⁴⁴ "Competition: Commission secures improvements to gas supply contracts between OMV and Gazprom," IP/05/195, 17 February 2005, http://europa.eu/rapid/press-release_IP-05-195_en.htm?locale=en.

⁴⁵ DG Competition: http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result.

⁴⁶ A. Barker, C. Oliver, J. Farchy, "Gazprom: Keeping the taps open," *Financial Times*, 15 March 2015, www.ft.com/intl/cms/s/0/b57ef62e-c979-11e4-a2d9-00144feab7de.html#axzz3UUOx9iqK.

legal obligation of unbundling (separation of transport and trading activities) of energy companies to third country undertakings ("Gazprom clause," a term not coined by the EC). The package demands that a foreign company invest in transmission assets with the prior consent of a national regulator and a positive opinion from the EC. It was this package and the unbundling requirement that effectively blocked a Gazprom and OMV transaction to acquire market share in the Central European Gas Hub (CEGH). After joining WTO, and in apparent retaliation at the EU's "Gazprom clause," the Russian supplier brought an action against the EU before the WTO, claiming that it is inconsistent with WTO rules on investment security and the free flow of capital. The arbitration is still ongoing.

4. The Energy Union—Are There Any New Tools in the External Energy Policy of the EU?

The impending WTO case notwithstanding, the Commission has clearly treated third countries in equal fashion, and their suppliers. Any differences stem not from unequal treatment but rather from the different approaches of the companies—their willingness to leap at the chance rather than just make a stand. Whereas Norway and Statoil have managed to adjust to the EU rules and benefit from a wider, more open and more European market, Russia and Gazprom have not. Gazprom profits economically (and Russia politically) from the old-fashioned fragmentation of the EU gas market and is highly interested in sustaining geographical (and hence, price) differentiation. For that, negotiations with the Commission for consensual resolution of the dispute will be lengthy and challenging, if feasible.

Norway and Russia, as two external suppliers of significant volumes of gas to the EU and as two countries with little scope in the near term to diversify their export markets, might be expected to pursue similar interests and strategies. Still, Norway, with close regulatory links to the EU, does not hinder market development in the EU but inserts its interests into EU rule-making. Russia, by contrast, sees gas supplies in terms of categories of power, taking on a “divide and rule” strategy. In theory, Norway could serve as an example for Russia on how to operate in the EU gas market whilst maintaining a high state of control over the sector. In practice, due to politics, this will not be the case. Any hope of Norway to serving as a “litmus test” for the development of Russia-EU gas relations is remote. The EU, while working on its idea of an energy union—its plan to deliver secure energy to all citizens—should hope for the best and prepare for the worst by developing an internal market and strengthening crisis-management mechanisms.

As shown above, the Commission toolbox to create a competitive and functioning EU energy market is already in place and works indiscriminately, *vis-à-vis* external suppliers. However, it will not be fully efficient unless the EU’s various internal markets are connected and liquid, which is an internal challenge for the EU. Moreover, the toolbox addresses only economic and competition issues, not political. To fill this gap and develop its tools, EU leaders came up with the idea to create an energy union.

The initial idea for the energy union—as presented by the former Polish Prime Minister Donald Tusk in 2014—was driven by concern about the EU’s heavy and unsustainable reliance on Russia. It was a reflection that the EU lacked the optimal instruments to face these recurring challenges and countervail a monopolistic position. The common purchase of gas (either in the form of an agency or consortium of companies) was an idea on how to create a level playing field for all EU countries, not just those benefiting from special relations with Russian companies.

The Commission considered the prospect of gas market fragmentation and its potential impact in case of a crisis. That concern was reflected in the May 2014 *Communication on European Energy Security Strategy*. First, the Commission advocated short-term measures to improve the situation before the winter (2014/2015). Second, long-term actions were put forward and eventually became the Commission’s energy union strategy (published in February 2015).

Short-term measures envisaged by the Commission were principally internal and aimed to improve transparency and the flow of information; awareness about regional bottlenecks and possible weak points in case of a crisis; and crisis management through the existing infrastructural and legal conditions. Yet, it seems that the EU authorities also took an important step by extending their prominence into the external dimension of energy policy. The Commission’s new engagement with external suppliers culminated when then-Energy Commissioner Günther Oettinger became involved with the Russia-Ukraine gas talks and virtually brokered a deal (the “Winter package”) between the two conflicted parties. In this way, the EU executive acted to enhance the EU’s

security of supply. Such engagement seems, moreover, to have transformed into the Commission's usual mode of operation.

One can draw the conclusion that the Commission is seeking to meet the political challenges of gas sales within its competences. Through the energy union, the Commission aims to strengthen the EU's toolbox in the external dimension of energy security and, possibly, inspire movement of some powers to the EU level.

The recently created post of vice president for the energy union (Maroš Šefčovič), and the retention of the familiar post of Energy and Climate commissioner (Miguel Arias Cañete), has yielded a new division of work but also new tasks. From the first months of observation of Šefčovič's activities, it seems obvious that he is charged with the task of stimulating integration of European energy markets and policies, and to achieve the energy union. Thus, from the very beginning of the current Commission's term, the vice president has himself engaged in the Russia-Ukraine talks and backed the Southern Gas Corridor, he has also opposed South Stream and currently impugns Russian goal to bypass Ukraine as a transit country by 2020. Together with Cañete, Šefčovič is pursuing increasingly active energy diplomacy, visiting Algeria, Norway, the U.S., and, of course, the Caspian region. This marks the long-awaited political edge to the EU's external energy policy.

Member States do, however, place limits on such activities whenever the goals of energy diplomacy become concrete. For some, the idea of giving the EU the right to oversee commercial gas deals is far-fetched and most probably the Commission will get a green light only for a gradual and moderate increase of its powers. In this way, the energy union has not challenged the status quo but rather opened the window of opportunity for the willing.

The Commission's efforts to diversify away from Russia are part of a much broader effort aimed at creating a single EU energy market. And this is a long-term vision for EU actions. The old-fashioned fragmentation of the EU's gas market benefits only Gazprom, and the Ukraine-Russia crisis triggered alarms to change the rules of the gas game.⁴⁷ Hence, the Commission made use of the Polish energy union proposal, and, in its own vision, moved forward with concrete measures and instruments. Although common purchases of gas were not decreed, there are a set of ideas that would enhance energy security and solidarity. For example, the Commission wants to have ex-ante insight into Intergovernmental Gas Agreements to prevent the inclusion of anticompetitive clauses (or those unrelated to gas supplies). This aspect is much-supported by Poland, as it is considered to have suffered, together with Bulgaria, from such clauses in IGAs.

⁴⁷ "Interview with Commissioner Miguel Arias Cañete," *Politico*, 26 June 2015, www.politico.eu/article/natural-gas-supply-turkstream-canete-russia-ukraine-gazprom-commission-energy-union.

5. Recommendations for Poland and Norway

For both Poland and Norway, EU actions have the utmost importance for their energy policies; however, each views the situation through different eyes—that of a gas importer and that of a gas exporter, accordingly.

Poland believes that the EU energy union can help balance the inequality in relations with Russia, its major supplier. Poland produces 27% of the gas it consumes. In 2014, three quarters of its imports (8.1 bcm) flowed directly from Gazprom under a long-term contract with Polish PGNiG (binding through 31 December 2022).⁴⁸ Strengthening the security of supplies, however, will require actions on both the EU and the Polish national levels. Norway, which tries to distinguish business and politics, does not see the energy union as an instrument that could introduce a vital change to its relations with the EU. Still, there are challenges and opportunities linked to the Commission's proposal: they are described in detail below, indicating the possibilities for Polish-Norwegian cooperation.

EU Support For Market Liberalisation

For Poland, the outcome of the EC proceedings against Gazprom for alleged market abuse will have an impact on the national market. According to the EC Statement of Objections,⁴⁹ Poland is one of the countries that could have been affected by all three allegations against Gazprom: (1) hindering cross-border gas sales by territorial restrictions in its supply agreements; (2) unfair pricing policy; and (3) maintaining control of Poland's key transit pipelines (Yamal). For this reason, Poland has a vital interest in resolution of the dispute between the Commission and Gazprom, which would lead to changing the supply contracts. Freed cross-border gas sales, lower prices, and access to Yamal would have a profound, positive effect on the development of the EU gas market, and it could open the door for imports to Poland from new directions, including, in a mid-term perspective, Norwegian LNG. In the Commission's strong normative approach, Poland sees a chance to increase security on its internal gas market.

For Norway, liberalisation could possibly pave the way for Norwegian gas to enter new markets in Central and Eastern Europe. Thus, Norway would push for greater and faster market openings, enhanced by the EU institutions.

EU Common Purchases of Gas

Despite the initial Polish idea, the Commission and the major Member States (Germany, Italy, and the UK) did not see the direct benefits of introducing a pan-European purchase of gas within the energy union, as on their liberalised and functioning gas markets it is seen as an unnecessary and anti-liberal step backwards.

This is in line with the Norwegian stance, which opposes the idea as nonmarket, arguing its efforts in dismantling its export monopoly, GFU.

⁴⁸ The rest of imports (3 bcm) came from Germany and Czech Republic under contract with VNG-Verbundnetz Gas AG (binding through 1 October 2022), purchases on stocks and virtual platforms, such as *NetConnectGermany*, *Gaspool*, and *European Energy Exchange*, www.ure.gov.pl/pl/rynki-energii/paliwa-gazowe/charakterystyka-rynku/6161,2014.html and www.pgnig.pl/pgnig/segmenty-dzialalnosci/obrot-i-magazynowanie/zakupy.

⁴⁹ "Antitrust: Commission sends Statement of Objections to Gazprom—Factsheet, 22 April 2015, http://europa.eu/rapid/press-release_MEMO-15-4829_en.htm.

EU Transparency and Gas Crisis-Management Mechanisms

Poland supports measures that could increase transparency, secure gas deliveries and transit also in times of emergency, and strengthen its negotiating position vis-à-vis Russia. Yet, strong support of market development is the way forward. It will not solve the energy security risks but could gradually minimise them and strengthen the country's position in developing the energy union project.

For Norway, as long as the fragile business information is protected, transparency is seen as an advantage; the same is true for gas-related crisis management, as it has the potential to bring certainty to supplies.

Diversification of Suppliers and Imports of Norwegian Gas

For Poland, new gas importers will have a positive impact on the negotiating position with the incumbent supplier as increased competition facilitates renegotiation of existing gas contracts. At first, with the opening of the LNG terminal, Qatari gas will comprise a new regional player (with a contract for 1.5 bcm by 2045). However, imports from Norway will depend on reducing limitations of technical and contractual nature—the lack of transport infrastructure and “locked” Polish demand for gas by 2022, due to the long-term contract with Russia and contracted LNG imports from Qatar.

Norway sees diversification (also through LNG exports to Europe) as a trend that the country cannot influence, but it can (justly) continue to promote its exports as reliable, with revenues that benefit European companies operating on the NCS, as well as democratic society. What the country wishes in return, however, is a security of gas demand in the European Union and flexibility in deliveries to avoid oversupplies in the EU (thus, a drop in prices). In this respect, its interest are not different from those of Russia.

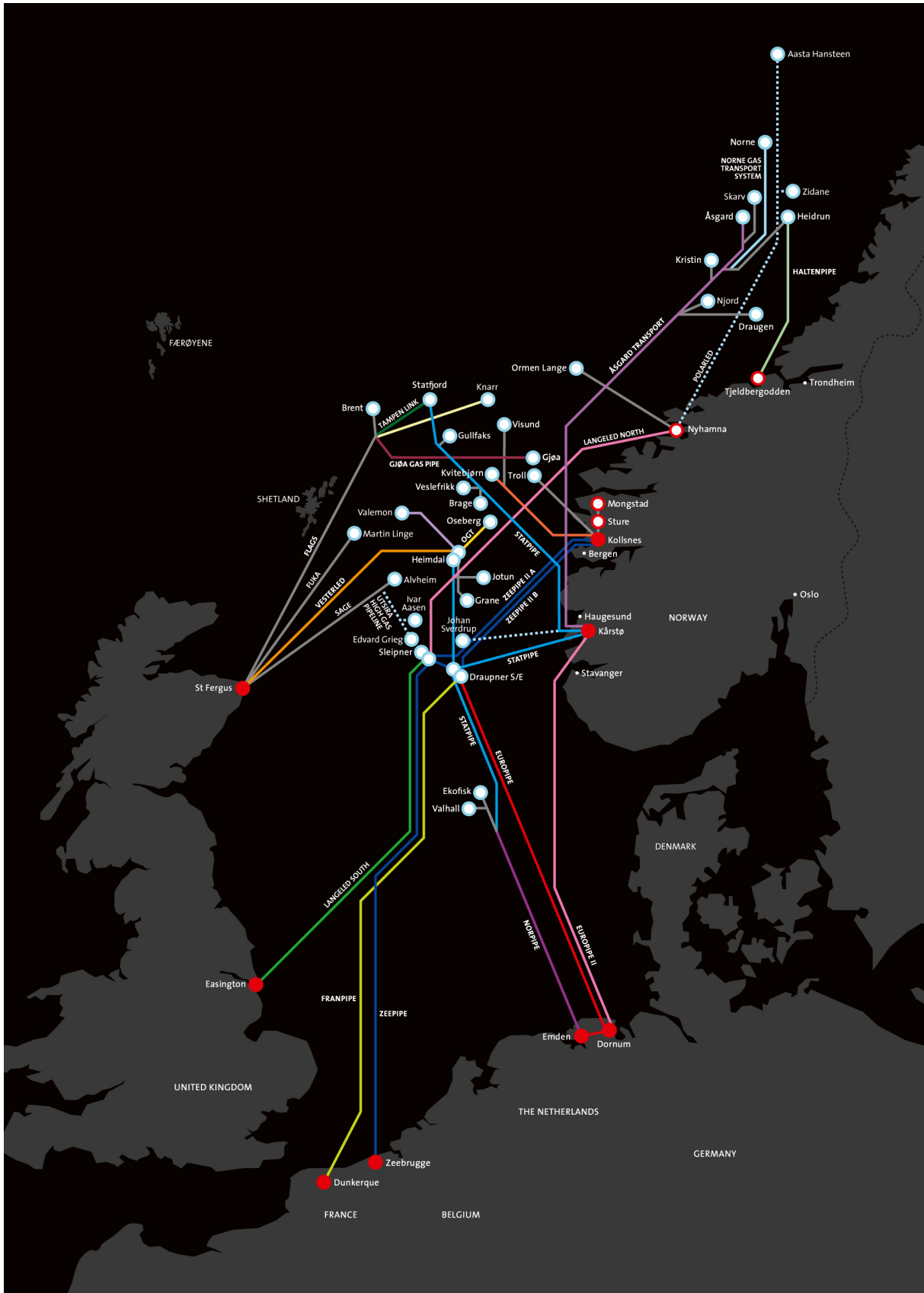
Appendix

Table 1. Key Aspects of Energy Resources in Norway and Russia

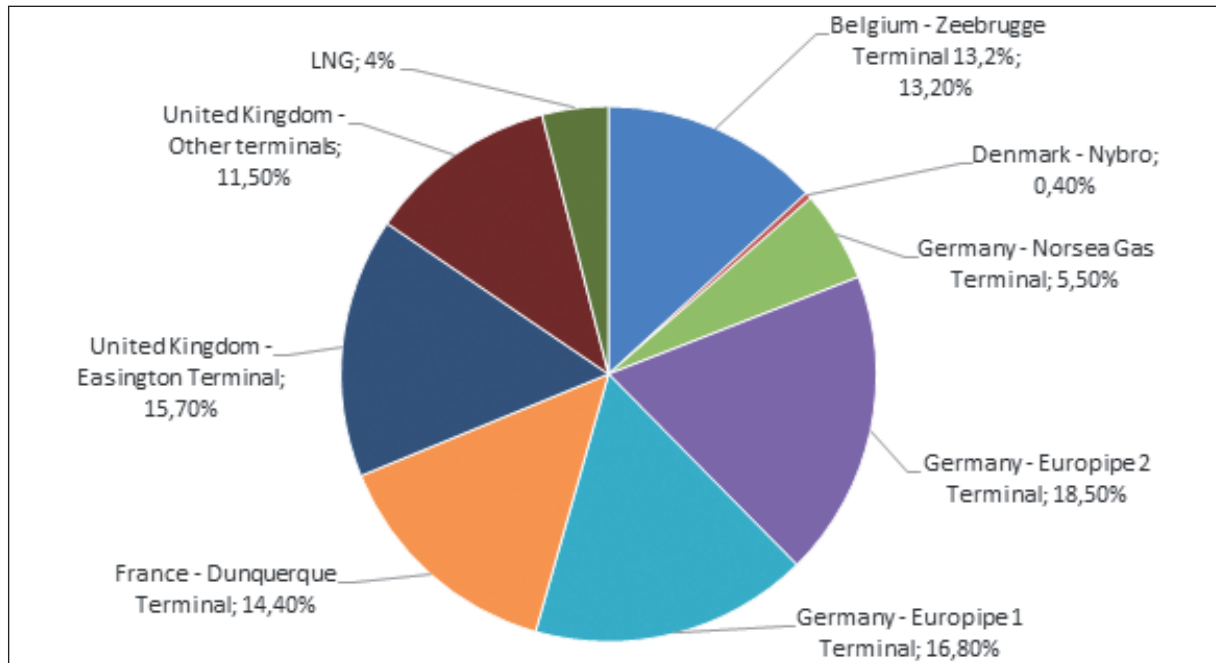
	Norway	Russia
Energy consumption, mtoe (BP 2014)	45	699
Share of global energy consumption, % (BP 2014)	0.4	5.5
Energy production, mtoe (IEA 2013)	195.35	1,314.88
Net energy exports, mtoe (IEA 2013)	164.84	571.81
Energy export value, USD billion (WTO 2010 data for 2008)	113.7	307
Energy exports, value per capita in USD (based on WTO 2010)	23,204	2,150
Share of fuels in export, % (WTO 2010)	67.7	65.7
Share of global fuel exports, % (WTO 2010)	4	12
Oil		
Oil reserves in billion tonnes (BP 2014)	1	12.7
Share of global oil reserves (BP 2014)	0.5	5.5
Oil R/P ratio (BP 2014)	12.9	23.6
Share of global oil production (BP 2014)	2	12.9
Oil production, mtoe (BP 2014)	83.2	531
Oil export, mtoe (2013 IEA, 2014 BP data for 2011)	72	234
Natural gas		
Natural gas reserves, TCM (BP 2014)	2	31.3
Share of global natural gas reserves (BP 2014)	1.1	16.8
Gas R/P ratio (BP 2014)	18.8	51.7
Gas production, bcm (BP 2014)	108.7	604.8
Share of gas production, % (BP 2014)	3.2	17.9
Gas export piped, bcm (BP 2014)	102.4	211.3
Gas export LNG, bcm (BP 2014)	3.8	14.2
Share of supply of energy to the EU in 2012, %		
Solid fuels, share of import to the EU	-	25.9
Crude oil, share of import to the EU	11.1	33.7
Natural gas, share of import to the EU	31.3	32
Share of natural gas export going to the EU from	98	70
Economic aspects of petroleum sector		
Share of petroleum sector in state revenues, 2013	29.1	50
Share of energy in export (2013 Norway, 2012 Russia)	48.9	71.4
Value of petroleum-based sovereign wealth funds (SWF), USD billion	893	181.8
Value in SWF per capita in USD thousand	178,600	1,266

Data: Compiled by J. Godzimirski, Project GoodGov.

Map 1. Norwegian Gas Pipeline System



Source: Gassco, *Bringing Norwegian gas to Europe*, www.gassco.no/Global/Nedlastbart/Engelskversjon/Publications/thenorwegiangastransportsystem_gassco.pdf.

Figure 1. Norwegian Natural Gas Exports in 2013, by delivery point

Source: Gassco / Ministry of Petroleum and Energy / Norwegian Petroleum Directorate.

Table 2. Major Gas Fields on the Norwegian Continental Shelf

Field	Gas, bcm	Year Discovered	Area
TROLL	506.6	1979	North Sea
EKOFISK	143.5	1969	North Sea
ÅSGARD	143.1	1981	Norwegian Sea
ORMEN LANGE	140.3	1997	Norwegian Sea
SLEIPNER VEST	123.2	1974	North Sea
Frigg (closed)	116.2	1971	North Sea
STATFJORD	69.2	1974	North Sea
SLEIPNER ØST	67.0	1981	North Sea
KVITEBJØRN	52.9	1994	North Sea
Heimdal (closed)	45.2	1972	North Sea
OSEBERG	40.6	1979	North Sea
ELDFISK	39.9	1970	North Sea
GULLFAKS SØR	39.1	1978	North Sea
SNØHVIT	29.3	1984	Barents Sea
Odin (closed)	27.3	1974	North Sea
Vest Ekofisk (closed)	26.0	1970	North Sea
GULLFAKS	23.1	1978	North Sea
KRISTIN	21.4	1997	Norwegian Sea
VALHALL	21.2	1975	North Sea

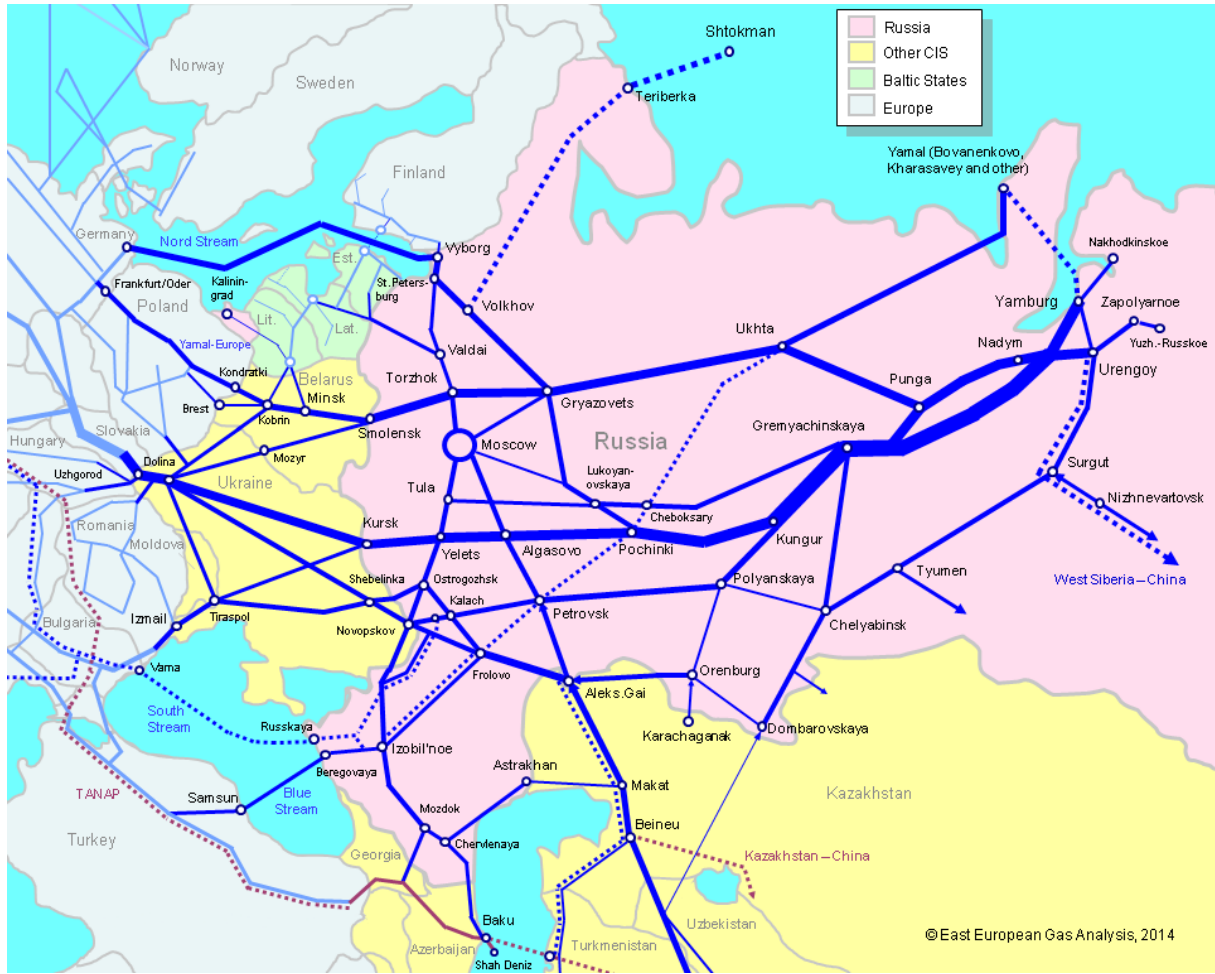
Source: Oljedirektoratet, <http://npd.no/no/Nyheter/Nyheter/2015/Ressursregnskap-2014>.

Table 3. Outlet Capacity of Export Pipelines at the FSU Border (bcm/year)

Pipeline	Capacity	Destination of exports
Via Ukraine:		
Orenburg-Western border (Uzhgorod)	26	Slovakia, Czech Republic, Austria, Germany, France, Switzerland, Slovenia, Italy
Urengoy-Uzhgorod	28	Slovakia, Czech Republic, Austria, Germany, France, Switzerland, Slovenia, Italy
Yamburg-Western border (Uzhgorod)	26	Slovakia, Czech Republic, Austria, Germany, France, Switzerland, Slovenia, Italy
Dolina-Uzhgorod - 2 lines	17	Slovakia, Czech Republic, Austria, Germany, France, Switzerland, Slovenia, Italy
Komarno-Drozdowichi - 2 lines	5	Poland
Uzhgorod-Beregovo - 2 lines	13	Hungary, Serbia, Bosnia and Herzegovina
Hust - Satu-Mare	2	Romania
Ananyev-Tiraspol'-Izmail and Shebelinka-Izmail - 3 lines	26	Romania, Bulgaria, Greece, Turkey, Macedonia
Total via Ukraine:	142	
Via Belarus:		
Yamal-Europe (Torzhok-Kondratki-Frankfurt/Oder)	33	Poland, Germany, Netherlands, Belgium, UK
Kobrin-Brest	5	Poland
Total via Belarus:	38	
St. Petersburg-Finland - 2 lines	6	Finland
Blue Stream (design capacity)	16	Turkey (possible to Greece, Macedonia)
Nord Stream (design capacity)	55	Germany, France, Czech Republic and others
TOTAL EXISTING EXPORT CAPACITY:	257	
New Projects (Final Investment Decision Stage):		
South Stream	63	Bulgaria, Serbia, Greece, Italy and others
Other New Projects:		
Nord Stream-3 and -4	55	Germany, France, Czech Republic, UK and others
Yamal-Europe-2	15	Poland, Slovakia, Hungary and others
Sub-total of new capacity:	133	
TOTAL PLANNED EXPORT CAPACITY:	390	
Guaranteed contracted exports for 2020-2025	158	

Source: *East European Gas Analysis*, www.eegas.com/fsu.htm.

Map 2. Major Gas Pipelines of the Former Soviet Union



Source: East European Gas Analysis, www.eegas.com/fsu.htm.

The **Polish Institute of International Affairs (PISM)** is rated among the 20 most influential government-affiliated think tanks worldwide. It promotes the flow of ideas that inform and enhance the foreign policy of Poland. PISM provides independent analysis and advice to all branches of government, contributes to wider debates on international relations and houses one of the best specialist libraries in Central Europe.



The **Institute of Political Studies of the Polish Academy of Sciences (ISP PAN)** was founded in September 1990 as an entirely new institution within the structure of the Polish Academy of Sciences. Its activities constitute a response to the challenge to study post-communist societies from a comparative perspective. ISP PAN carries out research in sociology, history, geopolitics and political theory, linking both empirical and theoretical study of societies.



The **Norwegian Institute of International Relations (NUPI)** has more than 50 years of experience and is Norway's leading independent centre for research and information on international political and economic issues. It undertakes long-term basic research as well as short-term applied research and advisory services. NUPI has been ranked among the top international think tanks in several recent rankings.

Project GoodGov—“National and European Governance: Polish and Norwegian Cooperation Towards More Efficient Security, Energy and Migration Policies”—is a Polish–Norwegian research project conducted by PISM in cooperation with NUPI and ISP PAN.

The project explores how Poland and Norway can learn from each other in the crucial policy areas of security, energy and migration. This report finalises the third stage of the project. The other three publications analyse: how unequal partners can learn from each other; how this process can be structured within the EU and EEA frameworks; and how this would function specifically between the two countries in the three chosen fields. The project is conducted by PISM in cooperation with the Norwegian Institute of International Affairs and the Institute of Political Studies of the Polish Academy of Sciences. The project is managed by Lidia Puka (PISM). The content editor is Roderick Parkes (PISM). More information: goodgov.pism.pl.

The research leading to these results has received funding from the Polish–Norwegian Research Programme operated by the National Centre for Research and Development under the Norwegian Financial Mechanism 2009–2014 in the framework of Project Contract No Pol-Nor/202499/39/2013.

