

Improving the rules of the gas game

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Like Russia, the EU's member states are guilty of energy nationalism. Here are some suggestions for the EU.

Russian gas is flowing to Europe again, but Moscow should have reason to bitterly regret the dispute it engineered with Ukraine last month. Gazprom, under its de facto chief executive, Prime Minister Vladimir Putin, has spent much of the credit that it has sought to build up in recent years. Now even Europe's diehard defenders of Russian energy practices are having second thoughts. Awareness is rising that for too long Europe's energy security has been in the hands of the Kremlin, a Ukrainian state behemoth, and shady middlemen operating in the dark.

That awareness is clearly shared by the ten European commissioners who are in Moscow today. But will Brussels and other capitals act to free Europe from the geopolitics of Russian gas?

The mantra repeated by European leaders is to reduce the role of gas in Europe's energy mix and diversify sources of imported gas away from Russia and Gazprom. Diversification and more investment in nuclear and other energy, as well as in other sources imports of gas, is one right answer, but that is a policy for 2020 or 2030 rather than 2010. Europe is not in a position to choose between alternative sources of energy. Europe's dependence on Russia for its energy will increase. In the next ten to 15 years it will have no choice but to buy a growing amount of gas.

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The search for a strategy for energy security should start now. The focus is not so much in investment in alternative energy sources, but with the legal, economic and political conditions that define the market for energy and trade in energy. Two areas are especially important.

Firstly, the EU should quickly press ahead with a single market for energy. The current organisation of the EU energy market is weakening its resilience to supply shocks. A common market would increase incentives for firms to develop EU-wide grids, and improve the interconnection of energy routes between member states. That would facilitate the re-routing of gas supplies to needy areas in case of emergency. Today, government-backed national energy companies from member states that are not interested in more Europe-wide competition have signed special deals with Gazprom for their investments in Russia and for energy supplies to the big lucrative national markets. Gazprom is interested in selling to. A single market for energy could help stop government-backed energy nationalism in member states.

Secondly, Russia should be brought to abide by the legal conditions for energy trade and investment it has agreed to. Brussels has preferred to deal with its energy concerns in an endless number of diplomatic efforts. Diplomacy is good, but the EU must drop any remaining illusions about what it can achieve with stop-and-go talks. A better start in bringing relations onto the right track is stronger reliance on existing legal frameworks. Russia is a signatory of the Energy Charter Treaty (ECT), a treaty well hidden in a corner of Brussels with legally binding commitments for its members on key issues in current energy problems with Russia such as transparency, investment protection and freedom of transit. Moreover, the ECT contains dispute settlement provisions that give member states and private investors the unconditional right to submit disputes to international arbitration under public law.

The ECT has one big problem: too few want to use it as a legal instrument to solve disputes. Only the shareholders of Yukos, once the private giant of the Russian energy sector reduced now to a carcass, have dared to challenge the Russian government in a legal dispute to be settled by the ECT. Surprisingly, the EU has declared no willingness to use the ECT in efforts to build a better energy-trade relationship with Russia, or to stop the Russian government and Russian firms from stealing energy assets owned by European investors.

Rather than having its lawyers argue its case in dispute settlement, the EU prefers to send bureaucrats to monitor energy imports. Angela Merkel, the German chancellor, offered last week to build in a new section on energy in Europe's Partnership and Co-operation Agreement negotiations with Russia. Her initiative is laudable, but it must be backed by hard legal mechanisms for dispute settlement with credible sanctions. If not, it will be useless.

Europe's increasing dependency on energy imports is a fact of life. The EU cannot afford to free itself from this yoke now; nor should it – isolating Russia will only make matters worse. But it should not accept the current rules of the game.

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