

Poland's Energy Security in the Context of the EU's Common Energy Policy. The Case of the Gas Sector

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Abstract

The concept of energy security can be rather difficult to precisely define. In fact, the scope of energy security includes a somewhat different set of issues in the gas sector than in the electricity sector. After all, electricity can be produced in every country of the European Union, but gas extraction is possible only in some. Natural gas is a commodity which constitutes a significant component of the export policy of only a few countries. As a result, the scarcity of gas in the EU makes it a very desirable resource for many countries, some of which are taking important energy-related decisions without consulting or assessing their impact on other Member States. This hampers the coordination of energy policy and the setting of common objectives with regard to energy security for the EU as a whole. The lack of cooperation among Member States has a clearly more negative impact on Poland and the other new Member States (which depend on a single gas supplier) than on the old EU-15, whose gas supply is generally well diversified. Moreover, the lack of proper infrastructure and cross-border connections puts in question the creation of a solid energy policy at the EU level in the gas sector.

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Résumé

Le concept de sécurité énergétique est assez difficile à préciser. En fait dans le champ d'application de la sécurité énergétique, différentes sont les données dans le secteur du gaz par rapport celui de l'électricité. Tant que l'électricité peut être produite dans tous les pays de l'Union européenne, l'extraction du gaz n'est pas possible partout. Le gaz naturel est un produit qui constitue une composante importante de la politique d'exportation de quelques pays seulement. En raison de la pénurie de gaz dans l'UE, il est une des ressources très souhaitable par de nombreux pays, qui prennent des décisions importantes concernant l'énergie, sans consulter ni évaluer leur impact sur les autres Etats membres. Ce l'autre côté entrave la coordination de la politique énergétique et la fixation d'objectifs communs en matière de sécurité énergétique de l'UE dans son ensemble. De toute évidence, le manque de coopération entre les Etats membres a un impact plus négatif sur la Pologne et les nouveaux États membres qui dépendent d'un seul fournisseur de gaz dans l'ancienne UE-15, dont les sources d'approvisionnement sont en général bien diversifiées. Aussi le manque d'infrastructures adéquates et de connexions transfrontalières met en question la solidité de la politique énergétique au niveau de l'UE dans le secteur du gaz.

Classifications and key words: energy security, natural gas, common energy policy

I. Introduction

Energy security is a broad concept and one that can be quite a challenge to define. Despite the fact that the gas sector, along with the electricity and oil sectors, have a common denominator (namely in the need for diversification of sources and energy carriers, supply continuity, modernization and expansion of infrastructure), the European Union's Member States evince differing circumstances as far as their domestic energy security is concerned. This is a result of many factors, including the historical relationships with suppliers, divergent standards of energy consumption, energy mixes, access to natural resources, dependence on imports (including from just one source), political pursuits, etc. Both these differences and the current practice of Member States, which neither consult nor analyze the impact of their decisions regarding energy on the remaining states of the European Union, hinder implementation of a common energy policy at the EU level. This results in the lack of a shared position as far as energy security matters are concerned.

The clearest example of the lack of cooperation among Member States is in the gas sector. Obviously, such lack of cooperation has a more disadvantageous

influence on Poland and the other new Member States which depend on a single supplier, than on the old EU-15. Furthermore, Poland (as several other new Member States likewise dependent on foreign energy supplies) faces additional challenges stemming from its proximity to and relationship with Russia, the EU's main gas partner. Important differences can be seen in several areas: the structure of energy use (energy mix), energy dependence, infrastructure, and the politicization of the issue.¹ The first important difference between the energy situation of Poland and that of the Western European countries has to do with the fact that the Central and Eastern European (CEE) countries in general have a much higher level of energy dependence on a single source – namely, Russia – than do other European countries. While in Western European countries the level of dependency on a single source hardly exceeds 30%, the CEE countries' level of energy dependency on Russian gas ranges from 50 to 100%. For Poland it is around 65%.² The difference between CEE and Western Europe is marked by further disparity in the effectiveness and quality of infrastructure and facilities, as well as the role energy plays in politics. For many decision-makers in the CEE countries the legacy of relations with the former Soviet Union casts a shadow over trade with today's Russia. For Poland and other CEE states, mistrust and fear spoil the perception of their relationship with their main gas supplier. This is an element that is not present in the relationship between other European states and their suppliers, be it Norway, Algeria, or Russia.

This article presents legal, economic, and political aspects of regulating Poland's energy security within the context of EU energy policy in light of the challenges that remain. These challenges include differing standards of energy consumption, differing energy mixes and access to natural resources, along with dependence on imports, infrastructural obstacles, and political initiatives both at the EU and domestic level. Finally, this article attempts to answer whether a common European energy policy at the current stage of EU integration is possible and what the potential is for further progress in this field.

¹ For more on this see A. Rulska, *The European Union Energy Policy: An Initiative in Progress*. Paper presented at the Conference in April 2006 at the Central and East European International Studies Association – University of Tartu, Estonia.

² B. Nowak, 'Forging the External Dimension of the Energy Policy of the European Union' (2010) 23 *The Electricity Journal*, pp. 57–67.

II. The security of the gas sector

The term ‘energy security’ is interpreted a bit differently in the gas sector than in the electricity sector. The reason for this is quite simple: whereas electricity can be produced in every country of the EU, gas extraction is possible only in a few. Natural gas is a commodity which constitutes an important component of the export policy of some countries: as such it enters the game of global trends of supply and demand³.

Therefore the question of the security of gas supplies should be considered with respect to two areas:⁴

- a) short-term security of supply – which depends on particular Member States that are obliged to undertake all possible and proper regulatory measures to determine their security aims and define the range of competence and responsibilities among market participants according to those security aims;
- b) long-term security of supply – which must include various strategic and geopolitical matters, both on the domestic and the EU level, concerned with ensuring the proper diversification of supply and investments in infrastructure, in order to enable meeting the growing demand for gas, especially in the face of more and more powerful dependence on supply from Russia.

The political conditions of Poland’s energy security are undoubtedly more visible in the gas sector than in the electricity or oil sector. Among others reasons, this results from the fact that Poland cannot satisfy internal demand for gas from its own sources (which cover around one-third of domestic demand), thus it is forced to import. Currently Poland extracts from its own mineral deposits – via Polish Oil and Gas Company S.A. (PGNiG S.A.) (hereinafter PGNiG) – around 3.9 bln m³/ a year of gas and imports from Russia around 9.5 bln m³/ a year⁵. It is worth emphasizing that Russia, which has gas reserves estimated at 48 trillion cubic meters⁶ (approximately 35% of

³ There are obviously some other questions which could and even should be considered while discussing demand and supply for gas, e.g., long-term contracts for supplies and contracts of take or pay types. This topic however is far too broad for the present work.

⁴ For more on this topic see also: ‘Provisions on supply security in gas sector’, available at http://ec.europa.eu/energy/electricity/legislation/doc/notes_for_implementation_2004/security_of_gas_supply_en.pdf

⁵ B. Nowak, *Energy Policy of the EU. Chosen legal and political aspects and their implications for Poland*, WAIp, Warsaw 2009, p. 103.

⁶ The International Comparative Legal Guide to: Gas Regulation 2007. A practical insight to cross-border Gas regulation work – Russia. Global Legal Group, p. 197. See also M. Kaczmarek M., *Bezpieczeństwo energetyczne w Unii Europejskiej*, WAIp, Warszawa 2010.

world resources), is the main gas player in the EU, which possesses only 4% of world resources of natural gas⁷. Thus, Russia's enormous gas resources, coupled with great demand and the high price of this resource, enables Russia to use gas as a tool of political pressure, especially towards countries which do not possess sufficient resources and whose sources of acquiring gas are not diversified. Among those who purchase Russian gas such behaviour prompts them to ensure energy security, e.g., through diversification of gas supplies. Such diversification, however, is not only a problem for Poland or a few other Member States, but of the EU as a whole. Therefore, the diversification of sources of acquiring energy carriers should be treated from the EU perspective, or at least in terms of the internal energy market as far as gas supply go. The internal European gas market, in turn, favours diversification of sources of supply thanks to the closer integration and cooperation of domestic gas markets.

Additionally, the greater power and negotiating position of energy companies in the EU is an asset of an integrated market, which is important for ensuring for themselves energy sources on world markets, as results from a bigger choice of delivery systems and easier access to final users. This is particularly important in the case of the EU's strong dependence on one importer. Whereas in 2001 outside supply covered 31% of the EU's demand for natural gas, by 2025 the EU's import needs for gas will have grown to an estimated 60% of its consumption⁸. Besides all this, competitive markets favour achieving diversification because they are able to react more flexibly to changes of supply and demand on world markets. However, we need remember that there are still serious problems which impede the proper functioning of the integrated European gas market. This includes the lack of cross-border connections (interconnections) and the lack of proper LNG (Liquefied Natural Gas) infrastructure in countries having access to the sea.

Apart from infrastructure, another fundamental problem is the lack of a common position among the Member States as far as gas supplies are concerned, as this significantly hinders the formation of a consistent policy at the EU level. Some EU Member States negotiate long-term contracts, especially with Gazprom, being motivated rather more by domestic political reasons than the aim of taking care of supply security seen from the overall European perspective. From the point of view of Gazprom, the situation is obviously altogether convenient. It is clear that no highly liberalized market

⁷ N. Cornwall, 'International trade in gas and prospects for UK gas supplies' [in:] Robins C. (ed) *Regulating Utilities and Promoting Competition. Lessons for the Future*, Edward Elgar, 2006, p. 46.

⁸ *Ibidem.*, p. 45

in Europe would appeal to Gazprom business strategy, as Gazprom wishes to guarantee itself long-term contracts with large, dominant companies and does not opt for liquid markets, where smaller entities, placed lower in the chain of supply, will compete to buy energy resources from it. This understanding seems to have been confirmed by Sergey Korovin, Deputy Head of Gazprom's Foreign Economic Relations Department, in an interview with in *Gas Matters*⁹, when he said *Gazprom would rather negotiate with its old customers and stick to long-term contracts. Since that works, why change things?*

It is obvious that it is far easier for Gazprom to enter the European market through cooperation with large, dominant players instead of through developing contacts with small and scattered entities. Besides, the high prices of gas maintain Gazprom's strong position as a main actor on the European upstream market and possibly on the downstream market in the future, too. Among the methods for loosening the tight straitjacket imposed by Gazprom and diminishing the risk of lack of gas supplies for European industry (especially for the power industry) are the development of nuclear power, carbon capture storage technology, and renewable sources.

But even so, electricity generated from renewable sources does not diminish the risk of Europe gas supply being cut off, as gas is used for other aims than the production of electricity – namely, for heating, kitchen usage, and the nitrogen and petrochemical industries. As a matter of fact, the EU is now in quite a difficult situation., for the lack of solidarity and joint policy at the EU level gives Gazprom broader possibilities to negotiate upstream contracts with individual Member States. Unfortunately, one has to admit that the EU is partially responsible for this state of affairs. For instance, having signed the Energy Charter Treaty, the EU then lost its impetus in attending to its gas and oil negotiations with Russia at the end of the 90s. At that time the price of gas was relatively low and Russia direly needed the influx of foreign investment. For the gas companies of the EU this constituted a perfect opportunity for safeguarding their interests in supply and for starting cooperation with the state-owned Russian companies. Today, the price of gas is high and demand is constantly growing. Therefore, Russia is able to either develop its own technologies or buy them from independent partners without disposing of its own resources in favour of foreign companies. As a result, the future of the international agreements like the Energy Charter Treaty (which binds the countries which ratified it to open their energy markets for foreign companies) looks rather gloomy, at least for as long as the prices of gas stay high.

⁹ The dominant European entities resist the division of property, *Gas Matters* March 2007 p. 20.

The main obstacle for the Russian authorities, which did not ratify the Energy Charter Treaty, is the Energy Charter Transit Protocol, according to which the admission of foreign companies to national transport infrastructure is provided under internal tariffs. As a result countries such as Azerbaijan, Georgia, Kazakhstan, Turkmenistan, and Uzbekistan – having large oil and gas resources and desiring to transport them to the EU on favorable terms through the territory of Russia – would be able to do so under the umbrella of a legally binding Treaty. In fact, all these countries have signed and ratified the Energy Charter Treaty and are directly interested in Russia's ratification of the Energy Charter Treaty. Russia, on the other hand, is afraid that ratifying the Energy Charter Treaty will increase the influence of the Central Asian and Caspian countries on the world gas and oil market, and thus decrease Russia's control over commodity streams on the world market along with its dominant influence on political decisions in the region.¹⁰ Russian apprehensions are confirmed by the fact that the cost of gas in the Caspian countries is below the average in Russia. Therefore it is rather clear that Russia's ratification of the Energy Charter Treaty would increase deliveries of gas from Central Asia and the Caspian countries to the EU markets, thus potentially decreasing the flow of Russian gas to the EU.¹¹ From the EU perspective a wider spectrum of choices as to gas sources would not only increase the security of supply, but also reduce the price of gas delivered to Europe in general.

Lastly, it is of course true that Europe is dependent on gas from Russia. But the converse is also true: the EU is Russia's largest client. If Russia loses credibility as a reliable supplier of gas, it stands to lose future revenues. However, two main issues seem to hamper a healthy relationship between the EU and Russia when it comes to supplies of energy: Russia's refusal to ratify the European Energy Charter, and the liberalizing energy networks within Russia without granting to it access to the EU.¹²

Finally, taking into consideration the strong position of Russia on the energy resources market and their use as an element of foreign policy, it seems that the need to work out a common policy concerning the security of gas supplies to the EU is an issue of a great importance on the present stage of European integration.

¹⁰ For more on this see B. Nowak, *Energy Policy of the EU...*, p. 106.

¹¹ See for instance M. Nowacki's point of view, *Prawne aspekty bezpieczeństwa energetycznego w UE*, Wolters Kluwer, Warszawa 2010, p. 365.

¹² For more on this see "The EU's energy dilemma: with or without Russia?" *EU Business*, March 22, 2006. Available at: <http://www.eubusiness.com/Energy/russia.2006-03-22>.

III. Poland and its gas concerns

The problem with a joint energy policy, one that takes into account European dependence on gas imports (especially dependence on Russia), rests also on the disparity in perceptions toward Russia between new Member States and the old Member States. Poland, supported by the Baltic States, envisaged the European Union as an organization that would move quickly to reduce its energy dependence on Russia, and that the EU itself would adopt a much tougher and collective position in relations with Russia. But Germany and France did not seem to fathom the legacy of difficult relations with the Soviet Union for the CEE countries, and thus stated they were unwilling to isolate Russia, preferring instead to engage in a long-term energy relationship beneficial to both sides. For France and Germany, where imports of gas from Russia constitute around 30% of all imported gas, cooperation with Russia is not perceived as deeply threatening to the domestic security of supply. For Poland and other CEE countries, in turn, where dependence on Russian gas ranges between 60% and 100%, close cooperation with the former regional hegemon is politically hard to accept. Nevertheless, one has to remember that, apart from the political baggage, Russia is an important trading partner for Poland.

From the Polish perspective, a certain safeguarding of the continuity of gas supply and energy security *sensu largo* is seen in a section of the Lisbon Treaty, which deals in particular with energy solidarity among EU countries in the case of crisis in the supply of energy resources. Article 194 section 1 of the Treaty stipulates:

‘In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (...) b) ensure security of energy supply in the Union;’

The Treaty’s idea for security of supply and energy solidarity in the EU can only be safeguarded by properly functioning domestic energy systems. To achieve this the European Union supports the Member States in modernizing the old and building new elements of energy infrastructure system by secondary and soft law acts. In the Communication of the European Commission on the Report on progress in creating the internal gas and electricity market¹³, the Commission stated the following: ‘Access to new gas sources usually requires the construction of new transport infrastructure, pipelines or liquefied natural

¹³ The Communication of the European Commission to the Council and the European Parliament about the Report on progress in creating the internal gas and electricity market, {SEC(2005) 1448 p. 14.

gas (LNG) facilities. In this respect the EU will need to give increasing focus on the strategic dimension of its energy relations with third countries, particularly suppliers, and how their deepening can contribute to the functioning of the EU's energy markets. The recent decisions taken by investors to launch a number of new LNG terminal projects in the EU constitute progress in this respect. Other pipeline and LNG projects need to follow and the dialogue with gas-producing countries must be intensified. LNG imports from new producing regions are already becoming a competitive alternative in some cases.'

The Treaty's idea for energy solidarity among the EU Member States, however, deals with the situation where Member State X is in need and where Member State Y has appropriate resources and infrastructure to help. Now, Poland in the case of a general crisis in gas supplies to the EU would be altogether in need. The lack of underground storage and supply infrastructure alternative to pipelines such as LNG terminals, not only puts Poland in a bad situation in the case of supply disruptions through gas pipelines, but also weakens and limits its active participation in making key decisions for the functioning of the EU's gas market.

Here it is worth noting that Poland reacted suspiciously to the matter of including a separate energy chapter into the Lisbon Treaty. Poland's Euro-sceptic government at that time claimed that it would accept new articles on climate change and energy as long as doing so did not mean more powers for the EU. Ironically, at that very same time Poland was the most enthusiastic supporter of inserting into the Treaty an energy solidarity clause in the case of serious supply problems, thus undermining its own policy on the energy article. It seems that this position was a result of a certain lack of preparation with regard to energy issues.

In fact the inclusion of energy into the Treaty of Lisbon as an area of shared competencies should be perceived as an attempt to establish a 'special cooperation *modus operandi* between the Community and national governments in the interest of greater transparency with respect to energy markets. Transferring some of the energy competencies from the control of national governments to the EU level shall accelerate necessary changes in further liberalization of the electricity and gas markets.

The question of diversification of supply sources itself (meaning the security of supply and energy solidarity) is a particularly hot political issue in Poland – and in other countries of Central and Eastern Europe, as well. The difficult geographic and geopolitical location of these countries and strong dependence upon Russian resources (gas and oil) enhances the fact that Russia, to a great extent, particularly in the case of the Baltic countries, considers this part of the EU to be an area of its traditional influence. In connection with this, the

clause on energy solidarity in the case of crises in resource supplies (especially from the eastern direction) is perceived by the CEE countries' leaders as a protective device against Russian ambitions¹⁴. Additionally, Poland (as the other new EU Member States) is far more dependent on one source of gas supply – Russia – than are the old Member States. As a matter of fact, the difficult historical relations between Russia and the Central and Eastern Europe countries and the current policy of Russia towards the Baltic countries have a negative influence on the new Member States' perception of Russia as a main gas trade partner of the EU.

Hence, the close cooperation between Germany and Russia (as far as gas goes) is difficult to accept for decision-makers in Poland and the Baltic countries, which are afraid of Russia regaining domination in the region. Therefore the matter of diversification of gas supply sources became even more fiery after the German government strengthened relations with Russia and formed a consortium responsible for building Nord Stream (the Northern pipeline) along the bottom of the Baltic Sea. This project is perceived by political decision makers in the Central and Eastern Europe countries as an offence and as an instance of German selfishness in solving a problem that in fact concerns the EU as a whole. Poland, having been omitted from the project, feels its energy security is thereby imperiled. Moreover, the fact that Germany (more than others) has staked its bets on strengthening relations with Russia, allows us to speak of special or strategic relations between Russia and Germany. Such a special relation with regard to energy sources, especially between those two countries, is difficult to accept for the new Member States, and especially the Baltic countries.¹⁵

Some experts argue¹⁶ that the realization of this project will detach Polish and Western European security of supply, thus undermining European solidarity and the prospects for the emergence of a common external energy policy at the EU level. However this seems fairly unlikely especially in the case where the Nord Stream project is perceived by the European Commission as a strategic investment for European energy (gas) security. From the point view of Poland, the most negative element of the pipeline construction is

¹⁴ More on this topic – see also B. Nowak, *Bezpieczeństwo energetyczne Polski a bezpieczeństwa energetyczne Unii Europejskiej*, Krytyka Prawa. Niezależne Studia nad Prawem, Vol. 2 – *Bezpieczeństwo* red. Wojciech Sokolewicz, WAiP, Warszawa 2010.

¹⁵ For more on this see A. Rahr, *Germany and Russia: A special Relationship*. The Center for Strategic and International Studies and the Massachusetts Institute of Technology, 2007, p. 1. See also A. Gusev, *Energy Relations between the European Union and Russia: content, problems, prospects*. Institut Europeen des Hautes Etudes Internationales, Nice 2008, pp. 68–74. Available at: <http://www.iehei.org/bibliotheque/memoires2008/Gusev.pdf>.

¹⁶ E. Wyciszkievicz, 'One for All – All for One – The Polish Perspective on External European Energy Policy' (2007) 8 *Foreign Policy in Dialogue* 20, pp. 34–44.

the fact that Poland will lose out considerably as a transit country: after all, that status has been essential in negotiation policy towards the Russian partner. Paradoxically, the recent conclusion of Polish-Russian negotiations regarding the Jamal gas contract might also provide some complications for Polish energy policy. Namely, the Russian national champion – Gazprom – in the course of negotiations gave up its moderate control over gas transit on Polish territory to Germany (Gazprom is using around 75% of the Jamal pipeline capacity by sending yearly 34 billion cubic meters to Germany and around 9.5 billion cubic meters to PGNiG SA). EuRoPol Gaz¹⁷, which so far has been the system operator for the Jamal pipeline, was replaced by the Gaz-System (Polish state-owned transmission system operator). This may be considered a very sophisticated move, whereby with Gazprom giving up control over transit, it seeks to relocate in the future its gas delivery to Germany to the newly constructed pipeline Nord Stream, slowly downgrading transit through the Jamal. This of course would further and significantly diminish the role of Poland as a transit country. From the Russian perspective, omitting transit countries (thus avoiding transit fees) shall be considered an important factor behind the decision to construct Nord Stream. It seems that Poland now has nothing to do but to join the already begun investment into Nord Stream and quickly finish construction of its LNG terminal, which will partially diversify the sources of gas supply. Germany might be a very good example here. It acquires gas from four sources: (i) from home, (ii) from the North Sea, (iii) from Russia, and (iv) from import of liquefied gas (LNG) from the Arab countries. Such diversification – 20–30% from each direction – makes Germany independent of sundry political and economic turbulences. What is more important, it enables Germany to maintain a flexible and economically rational gas policy.

In the case of Poland a certain complement to import by gas pipelines and to an LNG terminal might be the extraction of shale gas. One should remember, however, that this is a complicated, expensive process which for the time being does not guarantee the safeguarding of Poland's gas interest. Thus, Poland should invest in new technologies, but not resign from already accepted and functioning solutions. Moreover, the long-term contract signed by Poland (excluding Gazprom) with the companies Statoil (Norway) and DONG (Denmark) to import gas seem to be a rational solution to diversify the supply of this resource.

¹⁷ EuRoPol Gaz Transit Pipeline System was incorporated as a joint stock company on September 23, 1993. The company consisted of three shareholders: PGNiG SA (48% of shares), Gazprom (48% of shares), and Gas-Trading (4% of shares). Gas-Trading conducts business in the field of investment, manufacturing, trade, and services – as well as foreign trade. EuRoPol Gaz was mainly responsible for the operation and maintenance of the Jamal gas pipeline.

We should bear in mind, however, that diversification of sources of gas supply must run parallel to the development of infrastructure, which means modernization and development of transmission pipelines, interconnections with neighbouring countries, and gas underground storage facilities. In Poland's case this is even more important, because the majority of Polish gas pipelines run from east to west. Thus, to make maximum use of the contracts with the Scandinavian countries, a transmission network from the north to the south, connected with the east-west network, is needed. Interconnections with Germany, the Czech Republic, and Slovakia (which are slated for construction), would in fact have a double impact on Polish energy security. On the one hand, cross-border connections would significantly improve the security of supply, since in the event of any disruption in supply from the east, Poland could receive gas supplies from the west. On the other hand, it would increase competition on the domestic market, since there would be more gas on the Polish market which is not shipped and delivered by the national champion (PGNiG S.A.).

In Poland, where gas is imported mainly from the east, and through the territory of several countries, we see the problem of relations with countries of unstable political and economic systems (e.g., Belarus, less so Ukraine), what with their inclinations to make use of their own infrastructure as a factor in achieving their own objectives in regional policy. Any breaks in supply continuity inevitably have a negative impact on Polish industry, and at the same time on the country's energy security.

The strategic element of gas infrastructure that far more strengthens the security of gas supplies and the independence of the directions of supplies is the LNG terminal. Recent events regarding the problems of gas supplies to the EU clearly indicate the necessity to possess expanded infrastructure.

The European Community, aware of the uncertainty which dominates the energy resources markets, in 2004 issued a directive of the Council 2004/67/EC¹⁸ concerning measures to safeguard the security of natural gas supplies. This directive was recently repealed by regulation No 994/2010 of October 20, 2010 concerning measures to safeguard the security of gas supplies¹⁹. The aim of the 2004/67/EC directive, as well as regulation no. 994/2010, was to ensure an adequate level of security of gas supplies to Member States, which contributes to the proper functioning of the internal gas market expressed in directive 2003/55/EC (repealed by directive 2009/73/EC) dealing with the

¹⁸ Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, OJ [2004] L 127/92.

¹⁹ Regulation No 994/2010 of the European Parliament and Council of 20 October 2010 concerning measures to safeguard security of gas supply, OJ [2010] L 295/1.

common rules for creating an internal gas market²⁰. Due to the principle of subsidiary, directive 2004/67/EC did not impose on Member States strictly defined means for achieving the aim of the secure functioning of the domestic gas systems, but only suggests certain measures which are intended to lead to that aim. One of the main devices for implementing the policy of supply security indicated in the directive is nothing other than an LNG terminal. Regulation no. 994/2010 also points out LNG terminals as an important tool for securing gas supplies. In fact, regulation no. 994/2010 also supports regional cooperation involving natural gas enterprises, Member States, and national regulatory authorities designed to enhance the security of supply and the integration of the internal energy market. This includes the three regional gas markets under the Gas Regional Initiative: (i) the Gas Platform, (ii) the High Level Group of the Baltic Energy Market Interconnection Plan, and (iii) the Security of Supply Coordination Group of the Energy Community. Poland's integration with neighbouring countries through interconnections shall be seen as an important step toward securing gas supplies.

Returning to the LNG terminal, it should be pointed out that all the biggest EU countries (Germany, France, Great Britain, Italy, and Spain) possess at least one LNG terminal. If Poland (with the same population as Spain) wishes to matter in the game and be a partner in gas dialogue with the biggest countries and Russia, it must have an infrastructure which is complementary (if not alternative) to the pipeline infrastructure. In other words, Poland's lack of an LNG terminal is a great obstacle to pursuing a viable policy of diversifying energy sources. One example of such a viable policy of diversification is the Polish oil sector. For although almost 90% of the oil used in Poland comes from import – almost all of it from Russia – it is gas, not oil, which is the bigger problem today.

Poland has the possibilities of oil import in an amount satisfying the country's needs – by the pipeline *Przyjaźń* (*Friendship*) and by sea through Naftoport in connection with the points in the North Harbour in Gdańsk. The trans-ship capacity of Naftoport is now 23 mln tons²¹. Together with the trans-ship capacity of the points in the Northern Harbour in Gdańsk this gives around 34 mln tons a year, with domestic demand for oil in 2008 being around 18.5 mln tons.²² Moreover, the last modernization of Naftoport (above all the basin enlargement, which introduced tankers to Naftoport with a displacement

²⁰ Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, OJ [2003] L 176/57, as amended by the directive 2009/73/EC of the European Parliament and of the Council of July 13 2009 concerning common rules for the internal market in natural gas, OJ [2009] L 211/94.

²¹ <http://www.naftoport.pl/index.php?n=16>.

²² www.pern.com.pl.

of over 300 thousand tons), enables the transit of Russian oil through the territory of Poland in two new directions: to the US and to China.

The transit of a volume of 10 mln tons does not only considerably increase the rank of Naftoport on the Baltic sea, but above all positively impacts Poland's energy security. This is because on the territory of Poland there is more oil (in transit) that could (in a crisis situation) be redirected to the needs of the Polish refining industry. Nothing prevents similar solutions from being adopted in the gas sector.

The building of an LNG terminal is a long and expensive process. Moreover, the world LNG market (due to a great increase of demand) is now the producer's market and it is the latter that decides about the attractiveness and the risk of a given project. In connection with this it is advisable to find a strategic partner who could manage a minority block of shares in the investment. This should be a partner who not only has experience in LNG technology, but also a wide network of contacts with LNG producers. It could also be an LNG producer. What is more, the rule of buying capacity in different terminals to sell gas where it is the most advantageous has become popular among the producers.

IV. Conclusions

The present practice of individual Member States to take important energy-related decisions without consulting or assessing their impact on other Member States hampers the coordination of energy policy and the establishment of common objectives for the EU as a whole. Another important issue is the endowment of Member States with natural resources. Some of the countries are producers (such as the UK and the Netherlands), while the majority are energy-importing countries. As a result there is a great variation in the level of import dependence among EU countries, which fact, apart from the disparity in relations with Russia among Member States, creates a rather difficult obstacle to energy market integration. Other significant reasons impeding a joint approach in energy policy include differences in the energy mixes of the Member States and the divergent structure of national energy sectors. This predetermines different national energy priorities and sets the pattern for respective energy policies such as protectionism. Protectionist trends are most visible in France and Poland. The first fears that in an open market it could lose its national champions, and the second that its energy sector will end up under Russian control, giving rise to energy insecurity. Finally, additional infrastructure must be built to strengthen the existing networks and ensure the development of cross-border markets, as these measures would likely improve

the security of supply, guarantee a high level of public service, and maximize the benefits expected by consumers.

To overcome the domination of national interests, the EU does not only have to work out a common energy policy, but EU institutions together with Member States have to create a competitive internal European energy market and a system of energy solidarity in the case of supply crisis to the EU. Possible cooperation would involve: diversification of resource supplies and sources and types of energy carrier; building elements of market cooperation between energy sectors; and creating stable conditions for investments. The EU Reform Treaty (The Lisbon Treaty) in its provisions concerning energy should constitute an impulse to act in the area of common energy policy. It should also be the basis for issuing a range of legal acts pertaining to the energy solidarity expected by Poland and other new EU Member States. However, to put theory into practice, the EU as a whole will not only have to create proper rules of the game, e.g., anti-crisis plans, but also support the investment process in expanding energy infrastructure involving LNG terminals, underground storage facilities, pipelines, and interconnections between systems. The role of the particular Member State is to establish the political and legal frameworks needed for the network to be developed, in particular by promoting major gas supply infrastructure projects especially within the European Union, but outside it, too. For then those solutions, in connection with the European internal energy market, will allow the Member States to possess comparable energy mixes and import dependencies in line with their similar interests and expectations towards a common energy policy.

Finally, since economic indicators show that the current demand for energy services greatly exceeds the available supply, Poland's growing energy needs will require both domestic and foreign direct investment. The opening of the energy sector to private investment as a mean of alleviating energy shortages in Poland's transition economy is not an option but a necessity that over the years has become increasingly urgent. Poland suffers from a long-standing lack of investments in production capacity and infrastructure (re: transmission pipelines, underground storage, LNG terminals). In order to attract potential strategic investors, the Polish government must reduce the risk that its current policies pose: it must significantly enhance transparency in government institutions and create a governmental climate favourable to economic growth. Rapid increases in energy demand require solutions that attract domestic and foreign capital. The Polish government needs a policy that reflects the interest of investors and consumers who in the long run will pay for the necessary investments in energy security.

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