

April 6, 2016

Volume 5, Issue 4



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## The Russian Gas Deal with Greece and Its Effect on EU Solidarity: Pipe Dream or Diversion?

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### I. Setting the Scene

On 19 June 2015, Greece and Russia signed a memorandum extending the proposed Turkish Stream gas pipeline to Europe through Greek territory. Although Greece maintained that this cooperation with Russia should not be construed as a move against European partners,<sup>1</sup> the deal may have implications for EU solidarity. Although solidarity is not formally defined, it is widely understood to be a core principle which distinguishes the EU and its members from other regional arrangements and international organisations.<sup>2</sup> The concept of solidarity, which is generally understood to mean union from common responsibility and interests, is used in different legal contexts in the Treaty of Lisbon.<sup>3</sup> Significantly, Article 194(1) TFEU states that the aims of the Union's energy policy, will be performed 'in a spirit of solidarity' amongst member states.

The Council repeatedly referred to solidarity during the 2009 gas crisis, when gas supplies to Europe were cut following a transit dispute between Russia and Ukraine that subsequently pushed energy security to the top of the EU agenda.<sup>4</sup> Energy security is therefore an issue that creates bilateral tension and remains to be the ultimate test of the EU-Russia relationship as Brussels endeavours to overcome EU dependency on

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<sup>1</sup> BBC, 'Greek Debt: Fears Grow over Greek Banks' Health', 19 June 2015 <<http://www.bbc.com/news/business-33195732>> accessed 19 June 2015.

<sup>2</sup> Ines Hartwig and Phedon Nicolaides, 'Elusive Solidarity in an Enlarged European Union' (2003) 3 EIPAScope 19.

<sup>3</sup> Francisco J. Lorca, 'The Treaty of Lisbon and the Irish Impasse' in Joaquin Roy and Roberto Dominguez (eds), *Lisbon Fado: The European Union under Reform* (Florida European Union Center 2009) 108.

<sup>4</sup> The Lisbon Treaty's solidarity mechanism of Article 122(1) TFEU anticipates that the EU institutions act 'in a spirit of solidarity between Member States' should there be any shortage of supply of energy or similar products. See Sijbren De Jong and Jan Wouters, 'European Energy Security Governance: Key-Challenges and Opportunities in EU-Russia Energy Relations' (Leuven Centre for Global Governance Studies 2011) 41.

Russia by seeking to diversify its energy supplies.<sup>5</sup> This was recently reaffirmed in the Commission's gas stress test results, which concluded that greater solidarity was required between all member states and greater diversification amongst their suppliers.<sup>6</sup> In this light, the signing of bilateral deals with Russia's state-run gas monopoly Gazprom could be seen as undermining solidarity and the development of a coherent external energy policy within the EU,<sup>7</sup> with the new Russian gas deal with Greece further strengthening the argument.

Given that sustainable and reliable energy supplies are sources of tension between the EU and Russia,<sup>8</sup> the Athens deal with Moscow may not be completely consistent with the EU's policy of diversification in its quest for energy security, as it potentially risks entrenching the EU further in its energy dependence on Russia. Nevertheless; different priorities, historical ties, national loyalty, energy mix and market positions have resulted in discord within the EU in its approach towards Russia.<sup>9</sup> This impasse within the Union has made it easier for national governments to justify bilateral ties with Moscow, which has in turn enabled the Putin regime to pursue its own agenda through individual member states with what ought to have been negotiated at a multilateral level.<sup>10</sup> With bilateralism emerging as the default approach to engagement with Russia, the EU's endeavours to bolster its energy policy towards Russia have been hindered by the lack of solidarity amongst member states. This Reflection endeavours to demystify the controversy surrounding the recent gas deal between Greece and Russia by shedding light on the wider geopolitical factors that have motivated the respective states' actions. I will argue that there are different perspectives, besides solidarity, that need to be taken into account to ensure a holistic view of state activities that reveal more than an energy game and pipeline offensive.

## II. Bilateralism and the New Gas Deals

The EU-Russia energy relationship does not exist in a vacuum – it has evolved against a wider geopolitical backdrop of strained relations between Russia and the West with the ever-growing concern about energy security.<sup>11</sup> The relationship is therefore complex, which is to be expected in a strategic partnership between the world's largest

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<sup>5</sup> Rafael Leal-Arcas, 'The EU and Russia as Trading Partners: Friends or Foes?' (2009) 14(3) *European Foreign Affairs Review* 346.

<sup>6</sup> 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](https://ec.europa.eu/energy/sites/ener/files/documents/2014_stresstests_com_en_0.pdf)>.

<sup>7</sup> Katinka Barysch, 'Should the Nabucco Pipeline Project be Shelved?' (Centre for European Reform 2010) 4.

<sup>8</sup> Jeronim Petrovic, Robert W. Orttung and Andreas Wenger (eds), *Russian Energy Power and Foreign Relations. Implications for Conflict and Cooperation* (Routledge 2009) 91.

<sup>9</sup> Riccardo Alcaro and Emiliano Alessandri, 'Engaging Russia: Prospects for a Long-Term European Security Compact' (2010) 15(2) *European Foreign Affairs Review* 191.

<sup>10</sup> Aleksandra Gawlikowska-Fyk, Zuzanna Nowak and Lidia Puka, 'The EU Gas Game: Time to Redefine the Rules? Case Studies of Russia and Norway and Lessons for the EU, Norway and Poland' (The Polish Institute of International Affairs 2015) 14.

<sup>11</sup> Cameron, Fraser, 'The Politics of EU-Russia Energy Relations' *EU-Russia Energy Relations. OGEL Collection, Euroconfidential* (2010) 20.

natural gas exporter and one of the world's largest energy markets.<sup>12</sup> As Russia's biggest trading partner, the EU imports a significant volume of energy, which amounts to approximately 50% of its energy consumption that is expected to rise to 70% by 2030.<sup>13</sup> As such, security and diversification of energy supplies are important issues for the EU, as a significant consumer and importer of energy.<sup>14</sup> Nonetheless, the EU's policy of diversification of supply is constantly being undermined by the inconsistency between member states in signing bilateral deals with major energy suppliers to pursue national interests. Such deals are predominantly viewed by many countries within the EU – mostly Central and Eastern European states – as a flagrant example of quick bilateral politics with negotiations at EU level largely absent and thus perceived as lacking any form of solidarity.<sup>15</sup>

More recently, these bilateral gas deals have included Nord Stream and Turkish Stream - Nord Stream, an existing 55 bcm/y pipeline that connects Russia to Germany via the Baltic Sea, which is to be extended to double its capacity following an agreement between Gazprom, Royal Dutch Shell, E.ON and OMV announced on 18 June 2015<sup>16</sup> - and Turkish Stream, a 63 bcm/y pipeline connecting Russia to Turkey via the Black Sea, which is intended to carry Russian gas to South East Europe.<sup>17</sup> Both proposed pipelines are deemed to be controversial within the EU due to concerns that the construction of Turkish Stream and the extension of Nord Stream would lead to an overcapacity.<sup>18</sup> Turkish Stream - replacing the cancelled South Stream - in particular is considered to be in direct competition with EU-backed pipelines.<sup>19</sup> Furthermore, both pipelines would need to comply with EU rules<sup>20</sup> which is significant given that South

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<sup>12</sup> European Commission Directorate General for Energy, *Energy 2020: A Strategy for Competitive, Sustainable and Secure Energy*, 10 November 2010  
<<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016096%202010%20INIT>> accessed 5 April 2016.

<sup>13</sup> International Energy Agency (2004).

<sup>14</sup> Anna Aseeva, 'Re-thinking Europe's Gas Supplies after the 2009 Russia-Ukraine Crisis' (2010) 8(1) *China and Eurasia Quarterly* 127.

<sup>15</sup> De Jong and Wouters (n 4) 38.

<sup>16</sup> Reuters, '*Russia's Gazprom to Expand Nord Stream Gas Pipeline with E.ON, Shell, OMV*', 18 June 2015 <<http://uk.reuters.com/article/2015/06/18/energy-gazprom-pipeline-idUKL5N0Z42OB20150618>> accessed 25 June 2015.

<sup>17</sup> EurActiv, '*Commission Unimpressed by Russia's Pipeline Offensive*', 19 June 2015  
<<http://www.euractiv.com/sections/energy/commission-unimpressed-russias-pipeline-offensive-315564>> accessed 29 June 2015.

<sup>18</sup> EurActiv, '*From Brussels with Regulations: Tsipras Should Have Known Better*', 14 July 2015  
<<http://www.euractiv.com/sections/energy/brussels-regulations-tsipras-should-have-known-better-316298>> accessed 10 July 2015.

<sup>19</sup> Turkish Stream is considered a rival to the Western-backed Trans Adriatic Pipeline (TAP) pipeline project which will carry Azeri gas to European markets. The pipeline aims to transport gas from Azerbaijan's Shah Deniz II field in the Caspian Sea, one of the world's largest gas fields, by the end of the decade. TAP is part of the Southern Gas Corridor and is seen as Europe's alternative to its reliance on Russia. See Slawomir Raszewski, 'A Perfect Storm? Energy Union, Energy Security and the EU-Russia Energy Politics' (*EUCERS Newsletter*, Issue 45, 2015)  
<<https://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/eucers/newsletter/newsletter45.pdf>> accessed 5 April 2016.

<sup>20</sup> EurActiv, '*Barosso Warns Bulgaria on South Stream*', 28 May 2014  
<<http://www.euractiv.com/sections/energy/barroso-warns-bulgaria-south-stream-302467>> accessed 10 July 2014.

Stream - the failed pipeline to which Turkish Stream is a successor - was aborted in December 2014 due to inconsistencies with EU legislation.<sup>21</sup>

Given the fragmented EU energy market, the Commission has undertaken a more active role in the bilateral negotiations of EU member states and external suppliers. As such, the Commission exerted pressure on Bulgaria to freeze South Stream citing breaches to EU law in the intergovernmental agreement for the construction of the pipeline. Due to EU objections, Russia subsequently announced on the 1 December 2014 that it would be scrapping South Stream and pursuing Turkish Stream as an alternative.<sup>22</sup> Turkish Stream and the new gas deal with Greece is therefore perceived by skeptics as an attempt by Russia to sidestep the EU's network ownership, unbundling and non-discriminatory third party access rules.<sup>23</sup> Nevertheless, the Greek extension of Turkish Stream will still fall subject to EU law, which should raise concerns in Greece given the legal and political challenges that South Stream encountered.

### III. A Diplomacy of Pipelines

The widespread perception that divisions within the EU are between old and new member states, appears overly simplistic - rather it appears that distinct policy approaches towards Russia are being adopted by old and new members alike.<sup>24</sup> Greece and Cyprus, which are both Orthodox countries, are sometimes referred to as Russia's 'Trojan Horses'.<sup>25</sup> Close ties between Russia and Greece have deep roots in history, dating back to the Ottoman Empire when Greece often looked to fellow Orthodox Russians for assistance.<sup>26</sup> More recently, this friendly alliance has evolved into a diplomacy of pipelines, with the vision of Greece as a potential corridor and gateway for Russian gas to Europe.<sup>27</sup> The recent memorandum signed in June, brings this vision closer to fruition.

However, Brussels has its reservations about deepening ties between Russia and the new Greek government. Many commentators have speculated that Athens could

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<sup>21</sup> The Commission confirmed that the breach of EU law related to three major issues which included: firstly, the EU's network ownership unbundling which prohibits Gazprom as both producer and supplier of gas to simultaneously own production capacity and its transmission networks; secondly, non-discriminatory third party access to the pipelines which means that Gazprom does not have exclusivity as the only shipper; thirdly, the tariff structure which needs to be addressed. See EurActiv, '*South Stream Bilateral Deals Breach EU Law, Commission Says*', 4 December 2013 <<http://www.euractiv.com/energy/commission-south-stream-agreemen-news-532120>> accessed 1 December 2014.

<sup>22</sup> EurActiv, '*Russia Says South Stream Project Is Over*', 2 December 2014 <<http://www.euractiv.com/sections/global-europe/russia-says-south-stream-project-over-310491>> accessed 10 December 2014.

<sup>23</sup> EurActiv, '*From Brussels with Regulations*', 14 July 2015 <<http://www.euractiv.com/sections/energy/brussels-regulations-tsipras-should-have-known-better-316298>> accessed 14 July 2015.

<sup>24</sup> Mark Leonard and Nicu Popescu, 'A Power Audit of EU-Russia Relations' (2007) 9 European Council on Foreign Relations 2.

<sup>25</sup> Id.

<sup>26</sup> BBC, '*Could Europe Lose Greece to Russia?*', 12 March 2015 <<http://www.bbc.com/news/world-europe-31837660>> accessed 1 April 2015.

<sup>27</sup> Id.

potentially be using the gas deal as a bargaining chip, with its international creditors as leverage against pressure for reform. Such speculation has largely been fuelled by the timing of Prime Minister Alexis Tsipras's visit to Moscow in April and the subsequent genesis of the gas deal in the midst of profound turbulence surrounding the negotiations between Greece and its European partners. Officially however, stronger ties between the new Greek government and Russia have been declared as a desire to improve bilateral relations in various economic sectors.<sup>28</sup>

Notwithstanding, naysayers have maintained that the deal constitutes a potential move away from the West to a Russian-led sphere of influence.<sup>29</sup> This would be particularly unwelcome at a time of frosty political relations between the EU and Russia on account of the heightened tension over Ukraine, with Greece potentially exercising its veto power to prevent any further renewed sanctions.<sup>30</sup> Whilst it is unlikely that Greece will distance itself from the EU and NATO, Europe's deep-rooted concerns ultimately stem from Russian manoeuvres, which could be a form of Russian expansionism. Russia's energy policy is predominantly driven by security of demand and political influence, which is in stark contrast to the EU's energy policy which is underpinned by the need for security of supply, sustainability and competitiveness.<sup>31</sup>

The Kremlin's strategy of collecting key energy assets and pipelines in Central and Eastern Europe have subsequently politicised Russia's downward movement in the European gas market given Gazprom's expanding presence. Russia's acquisition of strategic energy infrastructure is therefore perceived by some member states as an attempt to influence domestic markets, which is considered an obstacle to European energy security.<sup>32</sup> However - speculation aside - this view fails to take into account any economic argument and reasoning of Russia's actions, namely that Russia's activities - as the world's largest natural gas exporter - within the energy sphere are commercially driven, rather than politically motivated against the EU - as the world's largest energy market and Russia's lucrative trade partner.

#### IV. Divide-and-Rule Strategy?

Despite any commercial argument, Russia is often described as pursuing a 'divide-and-rule' strategy in its dealings with Europe, which has exerted strain on EU solidarity.<sup>33</sup> This was recently alluded to in connection with the controversial Cyprus deal signed in February 2015, which provides Russia with a military foothold in Europe through its

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<sup>28</sup> Gawlikowska-Fyk, Nowak and Puka (n 10)14.

<sup>29</sup> BBC, 'Could Europe Lose Greece to Russia?', 12 March 2015 <<http://www.bbc.com/news/world-europe-31837660>> accessed 1 April 2015.

<sup>30</sup> EUObserver, 'Greece Keeps EU in Limbo on Russia Sanctions', 29 January 2015 <<https://euobserver.com/foreign/127423>> accessed 2 February 2015; The Guardian, 'Greece Delays EU Agreement on Russia Sanctions', 29 January 2015 <<http://www.theguardian.com/world/2015/jan/29/greece-delays-eu-agreement-russia-sanctions>> accessed 2 February 2015.

<sup>31</sup> Gawlikowska-Fyk, Nowak and Puka (n 10)14.

<sup>32</sup> Steven Woehrel, 'Russian Energy Policy Toward Neighbouring Countries' (CRS Report for Congress, 2009) <<http://www.fas.org/sgp/crs/row/RL34261.pdf>> accessed 1 August 2014.

<sup>33</sup> Leonard and Popescu (n 24) 13.

navy warships docked in the ports of Limassol.<sup>34</sup> The agreement is believed to have had its inception in a financial package aimed to bail out debt-ridden Cyprus,<sup>35</sup> although state officials on both sides confirmed otherwise. It is inevitably the case that countries will foster close relations where it is in their beneficial interest to do so and therefore it is no surprise that Greece too is looking to boost strategic ties with an ally that could offer certain advantages such as cheaper gas and much needed capital from Russian investments and tourism. In a climate of austerity and strong anti-EU sentiments amongst the Greek population, a turn to Moscow with a pro-Russian policy appears to be a commercially viable and reasonable attempt to restore stability.

By embarking on regional gas projects with Russia - in particular the extension of Turkish Stream - the macroeconomic landscape of the Greek economy is likely to improve. As a potential stakeholder in Moscow's pipeline project launched to bypass Ukraine as a transit state, Athens would primarily benefit from significant transit revenues incurred delivering substantial volumes of Russian gas to Europe. As such, Greece would be the recipients of 'hundreds of millions of euros of transit taxes a year', as recently declared by Putin during a press conference on 8 April 2015.<sup>36</sup> Athens has therefore reacted favourably to the prospect of strengthened cooperation with Moscow, which could be a potential game changer for the Greek economy.

It follows that the Greek government has expressed its willingness to play a fundamental role in the Turkish Stream pipeline project, which will facilitate Greece becoming one of the main power distribution centres on the continent. Speculation that Greece is pursuing stronger ties with Russia - as a means of obtaining external support and avoiding pressure from its European partners - therefore seems founded and gives credence to the theory that Moscow is potentially driving a wedge between EU member states by cutting bilateral deals.<sup>37</sup> However, whilst it is indeed the case that Russia has endeavoured to bilateralise all its dealings with EU member states, one could argue that this is by no means part of a grand plan to dismember the EU in pursuit of a divide-and-rule strategy, but rather an attempt to avoid the bureaucracy often associated with Moscow's dealings with Brussels.<sup>38</sup> The extension of Turkish Stream and the gas deal with Athens, which has been dubbed a 'wedge', therefore appears to be nothing more than the most recent move in Gazprom's strategic diversification plans and network reshuffling, of which Greece will be a key participant.

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<sup>34</sup> BBC, 'Cyprus Signs Deal to Allow Russian Navy to Use Ports', 26 February 2015  
<<http://www.bbc.com/news/world-europe-31632259>> accessed 1 April 2015.

<sup>35</sup> BBC, 'Cyprus Denies Russia Deal on Military Bases', 9 February 2015  
<<http://www.bbc.com/news/world-europe-31293330>> accessed 1 April 2015.

<sup>36</sup> EurActiv, 'Turkish Stream Will Have Another Name on Greek Territory', 9 April 2015  
<<http://www.euractiv.com/sections/global-europe/tsipras-turkish-stream-will-have-another-name-greek-territory-313636>> accessed 10 April 2015.

<sup>37</sup> EurActiv, 'From Brussels with Regulations: Tsipras Should Have Known Better', 14 July 2015  
<<http://www.euractiv.com/sections/energy/brussels-regulations-tsipras-should-have-known-better-316298>> accessed 10 July 2015.

<sup>38</sup> Leonard and Popescu (n 24) 13.

## V. Pipeline Politics

Although it cannot be determined with certainty that the first gas crisis was exclusively driven by political or economic reasons, suspicions within Europe led to the general perception that cuts in Russian gas supplies to the CIS countries (which subsequently affected EU member states) were predominantly politically motivated.<sup>39</sup> However, Russia has always maintained that the repeated gas disruptions were due to the relatively unstable transit states, of which Ukraine was a predominant culprit. This argument bears weight given that the 2006 crisis was arguably a result of Ukraine siphoning off Russian gas destined for European markets.<sup>40</sup> The gas dispute was therefore not a direct onslaught on member states with their gas volumes deliberately being halted, but rather the cutting off of Ukrainian supplies in response to which Ukraine diverted European gas for its own consumption. Reliance on unreliable transit states (including Ukraine, which aspires to become a reliable partner through the Energy Community) has subsequently made security of gas supply to Europe a contentious point in EU-Russia energy relations.<sup>41</sup> As a consequence, Moscow too has embarked on its own diversification strategy, sourcing supply routes that bypass Ukraine to reach end-users in Europe directly.<sup>42</sup>

Nevertheless, EU legislation is binding on all EU member states and as such all contracts signed with third party suppliers are expected to conform to the EU's internal market rules. By implication, Gazprom as a Russian supplier is susceptible to EU competition law and other internal market regulation.<sup>43</sup> The EU's efforts to reinforce its internal market with a legal infrastructure, has been bolstered by Article 194(1) TFEU which prescribes solidarity in the internal energy market.<sup>44</sup> The EU's liberalisation regulations, in particular the reciprocity clause, aim to protect the European gas market with unbundling rules, which are a fundamental aspect of the EU's Third Energy Package (TEP).<sup>45</sup>

## VI. A Call for Solidarity

Despite clashing energy strategies and conflicting positions within the EU amongst member states, it is posited that a call for EU solidarity will prove more beneficial in the long run, than individually negotiated bilateral deals amongst select member states

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<sup>39</sup> Jonathan Stern, 'The Russian-Ukrainian Gas Crisis of January 2006' (Oxford Institute for Energy Studies 2006) 16.

<sup>40</sup> Simon Pirani, Jonathan P. Stern and Katja Yafimava, 'The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment' (Oxford Institute for Energy Studies 2009) 22.

<sup>41</sup> Gawlikowska-Fyk, Nowak and Puka (n 10)12.

<sup>42</sup> EurActiv, '*Russia's Gas Pipeline Strategy and Europe's Alternatives*', 3 July 2015 <<http://www.euractiv.com/sections/energy/russias-gas-pipeline-strategy-and-europes-alternatives-315989>> accessed 10 July 2015.

<sup>43</sup> Gawlikowska-Fyk, Nowak and Puka (n 10)13.

<sup>44</sup> Id.

The TEP included rules on energy unbundling and a reciprocity clause. The TEP and its reciprocity clause were intended to address concerns in Brussels regarding the openness of the EU market and the restrictions imposed on EU companies trying to invest in Russia's energy market. See Andrei V. Belyi, 'Reciprocity as a Factor of the Energy Investment Regimes in the EU-Russia Energy Relations' (2009) 2(2) *Journal of World Energy Law & Business* 117, 124.

dependent on Russian gas.<sup>46</sup> Fragmentation within the energy market is rife and remains an obstacle yet to be overcome. The prevalence of national interests over the common union interest have contributed to the fragmented EU energy market. The Commission is struggling intensively with this fragmentation which is evident in the drastically different relations of various EU member states with external suppliers. Whilst the EU's energy policy is far from ideal, the EU's commitment to its plight for a coherent approach in its energy policy was reinforced in the unveiling of the Energy Union initiative.<sup>47</sup> It may be argued that EU members have hindered their only leverage against Russia, by discarding their unity and cutting deals in pursuit of their own national interests, which in effect undermine the core values and principles of the EU as a collective whole.<sup>48</sup> The mammoth task of formulating a strategy which facilitates both integration and diversification within a common energy policy and legal framework appears to be the fundamental challenge that lies ahead for the EU in its stance towards Russia.<sup>49</sup>

## VII. Speaking with One Voice

A number of simmering issues remain which have inhibited any constructive engagement on the part of the EU towards Russia. These issues include amongst others: reciprocity; the legal framework in place; and solidarity. Coherence in external energy relations is a matter closely related to the above mentioned issues of reciprocity and the need for a bilateral and international framework, as diverse positions and a lack of cooperation amongst individual EU member states undermine collective EU actions and legislative initiatives. The EU has much to gain from a united stance towards Russia, given the recurring energy cuts, lack of equal market access and the protracted negotiations on a revised bilateral agreement, all of which hinder energy cooperation.<sup>50</sup> However, inconsistent actions between old and new member states on how to deal with third country suppliers such as Russia have ultimately created a rift within the EU, with old member states preferring to cut bilateral deals. This rift has been further exacerbated by the strategic ties Russia has cultivated with old member states to which Moscow has provided preferential access to its energy assets.<sup>51</sup> This 'economic

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<sup>46</sup> EurActiv, 'Cameron: EU-Russia Relations Should Be More Positive', 9 April 2008, <<https://www.euractiv.com/section/global-europe/interview/cameron-eu-russia-relations-should-be-more-positive/>> accessed 5 April 2016.

<sup>47</sup> Commission, 'Energy Union: secure, sustainable, competitive, affordable energy for every European (Press release)' IP/15/4497 <[http://europa.eu/rapid/press-release\\_IP-15-4497\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4497_en.htm)> accessed 5 April 2015; Commission, 'Road map for the Energy Union (Energy Union Package. Annex 1)' COM (2015) 80 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, 25 February 2015, Brussels, COM/2015/080 final <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0080&from=EN>> accessed 5 April 2016.

<sup>48</sup> Leonard and Popescu (n 24) 2.

<sup>49</sup> Leal-Arcas (n 5) 347.

<sup>50</sup> Kevin Rosner, 'The European Union: On Energy, Disunity' in Gal Luft and Anne Korin (eds.), *Energy Security Challenges for the 21st Century*, (ABC-CLIO, LLC 2009) 166.

<sup>51</sup> Frederik Erixon and Iana Dreyer, 'Vested and Invested Interests: The Role of Investment Protection in EU-Russia Relations' (*ECIPE Policy Brief No. 02/2010*, 2010).



statecraft' has been detrimental to new member states that are the most dependent on Russia's energy resources. Despite having once been part of a Soviet legacy, new member states have not been recipients of Moscow's concessions which have been reserved for old member states whose relations are considered to be of strategic value.<sup>52</sup> Due to this inconsistency between member states internally, the external dimension of the EU's energy policy has not been accurately developed.<sup>53</sup> The EU's inability to speak with one voice therefore gives credence to the mantra 'too little Europe, too little union', which is arguably one of the reasons why the EU has thus far failed to develop a coherent strategic approach towards Russia.<sup>54</sup>

### VIII. What Needs To Be Done?

There can be no doubt that the EU-Russia energy partnership is a highly strategic relationship, the development of which will have profound implications for the international arena as far as energy security and stability are concerned. The recent developments in the international political sphere such as the Crimean annexation, Ukraine crisis and subsequent sanctions imposed by the EU against Russia, have made this clearer with the future of this strategic partnership hanging in the balance. With the EU heavily dependent on Russian energy resources, the sobering reality is that there are few alternatives to Russian gas in the short to medium term for much of the European continent. The EU's diversification strategy is therefore a top priority given its justified energy security concerns.

However, the quest for alternative energy suppliers has been a cumbersome task with individual member states preferring to strike bilateral deals without taking heed of internal energy market rules such as the EU's so-called ownership unbundling and non-discriminatory third party access.<sup>55</sup> If there is any lesson to be learnt from the South Stream project, it is that failure to comply with EU legislation is likely to lead to political controversy and a defunct pipeline. EU leaders therefore have a vested interest to ensure that any intergovernmental agreement signed with third party states and non-EU energy suppliers are consistent with EU law. It is only by upholding the rule of law and in 'a spirit of solidarity' that concrete diversification efforts can be achieved to the ultimate benefit of all EU member states, rather than through individual pipeline deals for cheaper gas that may have damaging consequences for Europe's energy security as a whole.

In this respect, the solidarity mechanism of Article 122(1) TFEU<sup>56</sup> warrants special attention – whilst it can be seen as a test of member state dedication to the Lisbon Treaty's solidarity provision based on the level of implementation amongst member

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<sup>52</sup> Id.

<sup>53</sup> Katinka Barysch (ed), *Pipelines, Politics and Power. The Future of EU-Russia Energy Relations* (1<sup>st</sup> edn, Centre for European Reform (CER) 2008) 7.

<sup>54</sup> Leal-Arcas (n 5) 351.

<sup>55</sup> EurActiv, 'South Stream Bilateral Deals Breach EU Law, Commission Says', 4 December 2013 <<http://www.euractiv.com/energy/commission-south-stream-agreemen-news-532120>> accessed 1 December 2014.

<sup>56</sup> Article 122(1) TFEU anticipates that the EU institutions act 'in a spirit of solidarity between Member States' should there be any shortage of supply of energy or similar products.

states - solidarity is not a definitive or quantifiable concept. It is nebulous and therefore subject to member states' interpretation and the amount of backing it is afforded in a time of crisis. Notwithstanding, Lisbon's specific mention of energy in relation to supply creates a legal basis whereby the Union can intervene to the extent that there are any supply disruptions.<sup>57</sup> The solidarity principle therefore sets a platform for the measures to be taken during a time of crisis to ensure energy security.<sup>58</sup>

In view of the above, it is important that the Lisbon Treaty is utilised to its full potential through the consistent implementation of the solidarity principle by all member states, to avoid any further fragmentation in the EU's energy market. This will also ensure coherence in external energy relations rather than the 'call for solidarity' being reduced to an empty phrase that is continuously repeated with little clout. Inevitably, the EU's relentless quest for security of supply and a fully integrated internal energy market have been buttressed by the announced plans for the creation of an Energy Union which would facilitate the Commission's calls for further coordination at a national level to speak with one voice in the EU's external energy policy. This should serve as a strong message to external suppliers – that the EU will exercise the same level of persistence in pursuing its ambitious goal of solidarity, one of the core objectives of the Energy Union,<sup>59</sup> as it did its fully integrated energy market. In this respect, it shows the EU's commitment to changing the status quo of dealing with Russia largely on a bilateral basis to engage more strongly with enhanced cooperation between member states as a collective whole, on matters pertaining to energy. Nevertheless, despite the Commission's calls for supranational coordination and integration in energy policy which have been bolstered by the formation of an Energy Union, the aims of the Union's energy policy cannot be implemented in a manner which impinges on the sovereign rights of member states to exploit their energy resources as they see fit.<sup>60</sup> Whilst the 2006 and 2009 gas crises prompted member states heavily dependent on Russian gas to call for greater integration in the form of an Energy Union, it is inevitably the case that member states less reliant on Russia's natural resources have been reluctant to agree to this further integration in energy policy. Therefore, while the Energy Union stands as testament to the EU's vision of member states acting in true solidarity and trust in the security of EU energy supply, the likelihood of this initiative, is something which remains to be seen.

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<sup>57</sup> De Jong and Wouters (n 4) 41.

<sup>58</sup> There appear to be some inconsistencies between Article 122(1) TFEU and the Union's policy on energy under Article 194 TFEU. Article 194(2) TFEU imposes limitations on the measures to be undertaken to achieve the objectives of Article 194(1) TFEU which 'shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply'. The extent to which Article 194(2) TFEU impacts the solidarity measures under Article 122(1) TFEU and the EU's ability to act in the event of a supply disruption is therefore unclear but inevitably allude to a potential conflict between these two provisions.

<sup>59</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy (fn 47).

<sup>60</sup> Article 194(2) TFEU states that energy policy measures undertaken 'shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply'.