

**Rede im 2. Panel External dimension of energy security for gas:
diversification and infrastructures**

zum Thema: What role for EU legislator?

Vortrag ca. 15min.

I was invited to make a few remarks today on the role of the EU legislator in the external dimension of security of gas supply, namely in the field of diversification of supply routes and building of new infrastructure. As you all know, the role of the EU legislator in the field of external policy has so far been rather limited.

The main responsibility for security of gas supply rests with energy companies. They are to invest in exploration and extraction, to build pipelines and to secure the necessary contracts both with suppliers and with customers.

The role of states is rather limited to a supportive one, either by accompanying negotiations at international level or by creating domestic and international legal conditions that allow for investments. When building a pipeline over land numerous issues of expropriation and compensation have to be resolved for example. Usually large pipeline projects are also accompanied by international contracts between the states involved. These should then provide for dispute settlement mechanisms for example.

If European institutions are involved, then in the first place the European Investment Bank or other institutions involved in the financing process such as the EBRD.

Is there a role for the European legislator at all in external energy policy at all then? Well, the answer is not obvious, but I believe that yes, the EU legislator, in particular Parliament does have a role to play.

Before giving you a few examples, let us first have a look at the legal base under the Treaty of Lisbon.

The main provision in the field of energy is the new Art. 194 of the Treaty on the functioning of the EU. For the first time it introduces a specific competency in the primary law. EU-Energy policy shall according to paragraph 1 inter alia "ensure security of energy supply in the Union" and "promote the interconnection of energy networks". As a principle the ordinary legislative procedure is applicable to measures proposed by the Commission on the basis of this article. Thus Parliament will be fully involved. Paragraph 3 states as the only exception to this rule that the EP shall only be consulted when the measures are primarily of a fiscal nature.

This represents a major change compared to the primary law in force so far. I do not have to explain to you why the security of gas supply in the EU has an external component of course. You all know that the EU cannot satisfy its gas demand merely by domestic production. In fact, the EU currently imports about 60% of its gas demand. By 2030 this figure is likely to increase to about 80%, making supply security an even more important topic for the EU.

Security of supply is now awarded equal importance with the other two major components of energy policy: sustainability (a discussion that has very much been reduced to the climate change topic) and competitiveness/energy price.

How the European Commission will be using these new possibilities remains to be seen. From what we know today, we will be presented with a major review of TEN-E guidelines by the end of this year. At the same time the Commission will propose a new instrument for the financing of energy infrastructure in the EU interest. It is self evident that this instrument will not only deal with infrastructure within the EU itself but also with infrastructure from third countries to the EU or indeed from the EU to third countries in the neighbourhood in order to connect them to the EU network.

But does this mean that we have so far not had any role to play in external energy and especially gas policy?

Several examples show that indeed the legislator did play a role. However it was more hidden. How was this achieved? The "trick" was to add an external dimension to internal market legislation.

I don't have to explain you in detail how important the internal dimension is for energy security within the EU.. As you all know we are currently discussing the Commission proposal on security of gas supply against the background of the January 2009 gas supply crisis.

Now this crisis did have an external dimension: In January 2009 the European Commission was asked by Ukrainian President Yushchenko to negotiate a deal between Russia and Ukraine in order to restore gas flows to Europe. During the negotiations the EU was then represented by the Czech minister for Industry and Trade and by Andris Piebalgs on the side of the European Commission - as the Commissioner for energy.

proposal for a regulation on the security of gas supply

Where now is the link to the gas security proposal currently under discussion in Council and Parliament? Article 10 paragraph 3 of the Commission proposal states that, "in a Community emergency (...) the Commission shall coordinate the actions with regard to third countries". Now some MEPs introduced the idea that this coordination should be done through the High Representative/Vice-President of the Commission - i.e. Baroness Ashton.

I personally believe that it is not appropriate for the legislator to give the Commission, especially its President, any instructions as to whom should be responsible. Just as the setting up of DGs, the separation of responsibilities is his responsibility alone. And he has, by the way, only one week ago awarded the energy Commissioner with the responsibility for external energy policy.

Thus even though the main focus of the proposal is and must remain the EU itself, it clearly involves an external dimension and empowers the Commission to act. Let me just add that the internal dimension is twofold: First Member states will have to do their homework and enact preventive measures, be they stocks or consumer oriented measures like flexy-fuel power plants. Member states should also enact emergency plans and seek regional cooperation where appropriate. Only as a last step should the EU itself be involved, when indeed the EU's security of supply is at risk and the dispute is both in time and intensity too large for just one Member state to handle. This is the second focus: Working together in the event of a crisis. And let me put it

very clearly: Solidarity can only be applicable, when all Member states have previously done their homework. It must not be used at the cost of other states that have invested in reverse flows, gas stocks or other measures.

the third liberalisation package

Let me come to another example in which the legislator was active in the external dimension of energy policy: The third liberalisation package and in this context especially article 11 of the gas market directive. As you will undoubtedly remember, this directive lays down strict rules concerning unbundling provisions for vertically integrated energy companies. The rationale behind these rules being that these companies would obstruct the completion of the internal market. This at least was the argument put forward by the European Commission after having released its sector inquiry.

Now the EU market is of course not limited to EU companies. Thus the question arose as to how to deal with vertically integrated companies from third countries. It is no secret that the drafters and most of my Colleagues in Parliament had companies like Gazprom in mind when discussing this issue. But of course Gazprom is not the only vertically integrated energy company in the world.

While article 10 of the said directive requires an undertaking to be certified as a transmission system operator (TSO) by the national regulatory authority, this certification is also required from undertakings "controlled by a person or persons from a third country or third countries". In this case the national regulatory authority is to notify the Commission. Article 11 paragraph 3 instructs national regulatory authorities to refuse certification if:

- the requirements of Art. 9 are not met. This means that the unbundling provisions laid down in this article are applied also to companies in third countries, if they wish to operate a grid in the EU.
- the granting of a certification would put at risk the security of energy supply of the Member State concerned or of the EU as a whole. However this decision cannot be taken light heartedly - it must be well reasoned.

This opinion by the national authority is reviewed by the European Commission.

Thus, from 2012 onwards, the legislator has given a clear signal towards third states that unbundling will be essential when doing business in the EU. In view of the high investment requirements within the EU, this provision has however also been criticised: It might well hinder outside companies that are willing to invest in the grid infrastructure and in new power stations within the EU and have the means to do so. By 2020 a total of 475.000 MW of power generation capacity will have to be built in the EU. Don't count of offshore wind as a solution: the 8 offshore wind parks that were inaugurated in 2009 only generated 577 MW despite their 199 turbines. Thus we need investment in "traditional" power generation, be it coal, gas or nuclear.

At the same time we all know that Gazprom has been granted a state monopoly on gas export from Russia. Applying transparency and unbundling might also open up the Russian market for EU companies. At this stage, we will have to wait a few more years before we will be able to analyse the first results of this external dimension of the gas directive.

Also in the gas directive the legislator has foreseen the possibility to exclude new infrastructure from certain provisions of the directive - including unbundling requirements - if certain conditions are met. New infrastructure is defined as infrastructure completed after 4. August 2003. Article 36 specifies the conditions as:

- the investment must enhance competition in gas supply and enhance security of supply
- the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted
- the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built
- charges must be levied on users of that infrastructure; and

- the exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected

This exemption is important in order to create incentives for the building of new infrastructure that might well transport or store gas coming from third countries. However the success of this exemption will depend on how national regulatory authorities apply these rules in practice. The European Commission will without doubt be very watchful of the developments - since it will have to be notified of every application for an exemption and draft decision by competent national authority.

Increasing the share of renewable energies and gas demand

Often internal policies have repercussions on energy demand - and in this context also tough on the external dimension of energy policy. One example is the EU's goal to reach a 20% share of renewable energies in its energy mix by 2020 - up from about 10% today.

By far the largest renewable energy to date is water. However it is very difficult in many Member states to increase the share of water in energy generation. Thus a large part of the additional renewable energy will have to be wind energy. Solar hardly plays a role at all so far, despite high subsidies for example in Germany.

Both wind and solar energy generation are however subject to high irregularities due to weather conditions. At night solar plants hardly generate any energy for instance and wind energy is conditional on the availability of wind.

Electric energy must however be available at all times. We cannot simply stop working when there is no wind and the lights and our PCs do not function anymore. We need a constant flow of energy. Thus these renewable energies need backup capacity.

Backup capacities not only increase the costs but must also fulfil certain requirements: coal power plants for example need several hours to become fully operational after a shutdown. Nuclear power plants are already used in France in order to overcome

irregular feedings in by renewable sources of energy, but several Member states opt against nuclear energy and here gas fired power plants are a popular alternative, especially since they can quickly be started.

In combination with the aim to reduce CO₂-emissions by 20% by 2020 and the reform of the emissions trading directive in 2008, these policies will inevitably increase the use of gas and thus the dependency of the EU on gas imports from third countries.

According to the European Commission, import dependency for gas will increase from 60% in 2007 to close to 84% in 2030. The reason for this increase is twofold: First our internal reserves will further decrease in the coming decades and second the development I just mentioned will increase gas demand in electricity and heat generation. This last development might still be enforced if the Member states introduce CO₂-based taxation - either unilaterally or at EU level. We expect a new Commission proposal in April this year.

Thus our internal policies have implications also on the energy mix and with this on our external energy policy. While OPEC is afraid of the EUs policy to increase the share of biofuels in the transport sector and of imposing strict CO₂-goals for cars, Russia already started new coal and nuclear power plants and has secured long term gas supply contracts with third countries in order to be able to deliver ever more gas to the EU.

While such a policy binds Russia ever closer to the EU, the same is true vice versa: the mutual dependency increases. Just take the January gas crisis: Gazprom lost more than 1.1 Billion Dollars in revenue due to unsupplied gas in January 2009. At the same time the Russian state lost a lot of tax money. On the other side, many Member states had to find alternative supplies.

Other policies

Such experiences increase two feelings: First that the EU needs new supply routes in order to bypass either Russia entirely or at least Ukraine as a transit country and thus receive gas independently of the regular disputes between Russia and Ukraine. This could be done either by building new pipelines such as North Stream or Nabucco or South Stream or by further investing into LNG terminals. And second to become ever more efficient and thus lower gas demand.

As a legislator we were for example involved in the drafting of the economic recovery package. This package foresees several billion Euros for energy infrastructure, not least gas infrastructure. Close to 2.4 Billion Euro are to be granted to electricity and gas infrastructure projects in 2009 und 2010.

In this context up to 200 Mio. Euro have been granted to the Nabucco pipeline project, up to 150 Mio. Euro were awarded for Baltic interconnector, 80 Mio. for an LNG-terminal in Poland, 80 Mio. for an interconnector between Romania and Hungary and several other projects will also benefit. In total 1.36 Billion Euro were awarded for interconnectors and LNG-facilities.

Furthermore - as an internal measure - reverse flow will be strengthened and also partially funded by the EU through money from the recovery package - for example in Spain and the Baltic States or in South-Eastern Europe.

Given the enormous costs for example for the planned Nabucco or North Stream pipelines, these contributions are of course not decisive for the question of whether to go ahead or not in the construction. But they represent a clear political signal that the EU is willing to diversify its supply routes - and thus gives financial and political backing to the companies involved.

new proposal by the Spanish Presidency

This procedure is of particular importance since the Council has called for a new instrument for energy security and infrastructures - an instrument the Commission is currently working on. According to the energy strategy for 2010 to 2014 presented for discussion by the Spanish Presidency, this instrument should "solve cases where

action is not taken to develop links in the Trans-European Energy Networks which are either missing altogether or lacking in capacity." This might encompass financial intervention at national, regional or indeed EU level.

Furthermore the Spanish Presidency has called on the Commission to submit the necessary measures this year in order to implement the six large interconnection and external connection projects considered essential to guarantee the EU's energy security. Thus we are expecting a specific communication by the Commission in the Mediterranean Ring for example.

The six defined priority projects by the Second strategic energy review are:

- the development of a Baltic Interconnection Plan covering gas, electricity and storage
- A southern gas corridor for the supply of gas from Caspian and Middle Eastern sources
- Liquefied natural gas and adequate gas storage - the Commission will propose an LNG Action Plan
- A Mediterranean energy ring linking Europe with the Southern Mediterranean through electricity and gas interconnections
- North-South gas and electricity interconnections within Central and South-East Europe
- a Blueprint for a North Sea offshore grid

Today we don't know yet which measures the Commission will propose in order to advance these projects. The new legal base under the Treaty of Lisbon might open up new possibilities for the Commission - and the legislator to participate in the formulation of an external energy policy.

coming to an end

Having provided you with all these examples my answer would be: The role of the legislator should be to consider much more often the effects of the legislation in external aspects of energy policy and in particular of supply security.

In the last years we have witnessed that the debate on climate change has dominated all energy policy. With the January gas crisis last year, the bundling of energy policies into one DG and the creation of a new legal base for energy policy in the treaty of Lisbon, I do hope that we will have a more consistent energy policy in the future, an energy policy that reconciles security of supply with sustainability and competitiveness.

Thank you very much.