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## Issues in European Union-Russia Energy relations<sup>[1]</sup>

### I. INTRODUCTION

It cannot be denied that one of the most prominent elements of geopolitics is energy. This has a major determining influence in the conduct of world diplomacy and relations between states in the international arena. A country's ability to competitively export sources of energy to foreign countries undoubtedly gives it a certain influence in world affairs, while countries lacking such resources naturally seek various ways to fulfill their energy needs. The Russian Federation is the major supplier of natural gas to the Member States of the European Union, with Russia looking to the European Union as a major export market for its natural gas, while the European Union relies on Russia's supply of this commodity. There have been attempts and calls for some sort of regulation in this area, in the sense of creating a legal framework in order to govern this aspect of the relationship. In this article there shall be an examination of various attempts and proposals with regards to this issue. Furthermore, two specific pipeline projects, OPAL and Nord Stream 2, shall be surveyed as well as the legal issues that have arisen within the context of the European Union's regulatory framework with regards to energy.

### II. THE LEGAL FRAMEWORK OF EUROPEAN UNION-RUSSIA ENERGY RELATIONS

Russia is the main supplier of gas to the European Union,<sup>[2]</sup> and thus, in practical terms, energy is one of the most important aspects of relations

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[2] Eurostat, Energy Production and Imports, June 2017, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Energy\\_production\\_and\\_imports](http://ec.europa.eu/eurostat/statistics-explained/index.php/Energy_production_and_imports) (Accessed 2019.05.19)

between the European Union and Russia. The general legal framework of European Union-Russia relations is established by the 1994 Partnership and Cooperation Agreement, which also contains an article dealing with matters relating to energy.<sup>[3]</sup> The inclusion of this provision in the Partnership and Cooperation Agreement sought to improve the energy relations between the European Union and Russia and also sought the integration of the Russian energy market.<sup>[4]</sup> However, it cannot be denied that this article is somewhat vague.<sup>[5]</sup> It had been speculated that any new Partnership and Cooperation Agreement between the European Union would contain a chapter relating to the subject of energy.<sup>[6]</sup> However, at the moment no substantive progress has been made in bringing about such an agreement, and it seems unlikely that this will occur in the near future due to the present state of relations.

An important attempt at creating some sort of overarching legal framework for European Union-Russia energy relations was the Energy Treaty Charter, which was seen as having the potential to act as the basis of a framework regulating energy relations between the European Union and Russia.<sup>[7]</sup> This came into being with the purpose of promoting international cooperation in the area of energy and entered into force on 16 April 1998.<sup>[8]</sup> More specifically, one of its aims was to integrate the Western European and the former Soviet states energy sectors, which must be seen in the context of the new relationship that arose with the

[3] This is Article 65, which is entitled “Energy Partner and Cooperation Agreement”. It states that: “1. Cooperation shall take place within the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe.

2. The cooperation shall include among others the followings areas:

- improvement of the quality and security of energy supply, in an economic and environmentally sound manner,
- formulation of energy policy,
- improvement in management and regulation of the energy sector in line with a market economy,
- the introduction of a range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment,
- promotion of energy saving and energy efficiency,
- modernization of energy infrastructure including interconnection of gas supply and electricity networks,
- the environmental impact of energy production, supply and consumption, in order to prevent or minimize the environmental damage resulting from these activities,
- improvement of energy technologies in supply and end use across the range of energy types,
- management and technical training in the energy sector.”

See Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, 21997A1128(01), Official Journal L 327, 28/11/1997 P. 0003 – 0069, [http://trade.ec.europa.eu/doclib/docs/2003/november/tradoc\\_114138.pdf](http://trade.ec.europa.eu/doclib/docs/2003/november/tradoc_114138.pdf), (Accessed 2018.01.20)

[4] Waloszyk, 2014, 76.

[5] Van Elsuwege, 2012, 6, <http://ceurus.ut.ee/wp-content/uploads/2011/06/EU-Russia-Paper-51.pdf> (Accessed 2018.09.16)

[6] Konoplyanik, 2009, 258.

[7] Ibid, 261.

[8] Energy Charter Secretariat: The Energy Charter Treaty and Related Documents - A Legal Framework for International Energy Cooperation, 2004, <http://www.ena.lt/pdfai/Treaty.pdf> (Accessed 2018.09.16)

end of the Cold War.<sup>[9]</sup> The Russian Federation signed the European Energy Charter in 1991, which was followed by the signing of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects.<sup>[10]</sup> However, Russia applied the Energy Charter Treaty only provisionally, and later in 2009 terminated this provisional application, and explicitly stated that it did not intend to become a contracting party of the ECT.<sup>[11]</sup> As a result of Russia's withdrawal from the ECT, it can be said that energy relations between the European Union and Russia are essentially regulated by commitments and dialogues of a non-legally binding nature.<sup>[12]</sup> The most notable is the EU-Russia Energy Dialogue, which was launched on 30 October 2000.<sup>[13]</sup> The motivation for this development was the recognition of the mutual interdependence which exists between the European Union and Russia in the area of energy.<sup>[14]</sup> Its primary aim was to strengthen the relationship between the two, and to increase reliability, predictability and security in energy matters.<sup>[15]</sup> As to substantive developments as a result of this dialogue, there was the creation of an early warning mechanism for dealing with energy emergencies, and also an understanding was reached in order to prepare a road map for European Union-Russia cooperation until the year 2050.<sup>[16]</sup> However, as in the case of the provision relating to energy in the Partnership and Cooperation Agreement, these may be described as "soft law" mechanisms, and lacks legally binding norms and framework.<sup>[17]</sup>

Later, in May 2003 at the St. Petersburg Summit the European Union and Russia agreed to strengthen their cooperation by creating four common spaces within the framework of the 1994 PCA, with the memorandum on establishing these common spaces stating that "They agreed to reinforce co-operation with a view to creating four EU/Russia common spaces, in the long term and within the framework of the existing Partnership and Co-operation Agreement (PCA), on the basis of common values and shared interests. These common spaces cover economic issues and the environment; issues of freedom, security and justice; external security, including crisis management and non-proliferation; and research and education, including

[9] Belyi, 2009, 1, [https://www.files.ethz.ch/isn/146402/ARI98-2009\\_Belyi\\_Russian\\_Perspective\\_Energy\\_Charter\\_Treaty.pdf](https://www.files.ethz.ch/isn/146402/ARI98-2009_Belyi_Russian_Perspective_Energy_Charter_Treaty.pdf) (Accessed 2018.09.16)

[10] Mironova, 2014, <https://energycharter.org/what-we-do/knowledge-centre/occasional-papers/russia-and-the-energy-charter-treaty/> (Accessed 2018.09.13)

[11] Ibid.

[12] Georgiou and Rocco, 2017, 3, [http://epapers.bham.ac.uk/2944/1/IEL\\_Working\\_Paper\\_01-2017.pdf](http://epapers.bham.ac.uk/2944/1/IEL_Working_Paper_01-2017.pdf) (Accessed 2018.09.16)

[13] European Commission / Directorate-General for Energy, EU-Russia Energy Dialogue, 2011, 23, [https://ec.europa.eu/energy/sites/ener/files/documents/2011\\_eu-russia\\_energy\\_relations.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2011_eu-russia_energy_relations.pdf) (Accessed 2018.09.16)

[14] Ibid.

[15] Ibid.

[16] Elsuwege, *ibid* 6.

[17] Ibid.

cultural aspects.”<sup>[18]</sup> Within the context of the common economic space, it was stated that “In this space, the EU and Russia also intend to maintain the momentum of the existing energy dialogue”.<sup>[19]</sup>

It is worth noting that in addition to these attempts to create a sort of common legal framework regulating energy relations between the European Union and Russia, one hypothetical scenario which has come up for discussion is that of the Russian Federation adopting the European Union’s *acquis communautaire* in the area of energy.<sup>[20]</sup> It is thought unlikely that Russia, a major exporter of gas, would accept a framework of energy relations with the European Union that would involve the reception of the latter’s energy *acquis*, but rather, would seek to remain outside the European Union’s regulatory system.<sup>[21]</sup> This can be said to differ from the approach of certain other Post-Soviet states which seek deeper integration with the European Union through approximating to the European Union’s norms and standards, which includes the area of energy.<sup>[22]</sup>

### III. OPAL PIPELINE

Ukraine is one of the major transit corridors through which Russian natural gas is delivered to the European Union.<sup>[23]</sup> The difficult nature of relations between Russia and Ukraine at certain times has led to attempts by Russia to diversify the routes through which it transports its gas to various parts of Europe, seeking alternatives to the Ukrainian transit route.<sup>[24]</sup> Russia for some time had an incentive to

[18] *EU/Russia: The four “common spaces”*, 23 November 2004, MEMO/04/268, europa.eu/rapid/press-release\_MEMO-04-268\_en.pdf, 1 (Accessed 2018.09.16)

[19] *Ibid.*

[20] Konoplyanik, *ibid.*, 261.

[21] Georgiou and Rocco, *ibid.*, 5.

[22] One example of this is can be seen the European Union’s attempt to export its energy *acquis* through the creation of the European Energy Community, which aims at strengthening European Union’s energy security and the exporting of its energy-related norms to neighbouring countries. According to the Energy Community’s Secretariat, “The Energy Community’s mission is to extend the EU internal energy market to South East Europe and beyond on the basis of a legally binding framework. The principal instrument to achieve this aim is the adoption of the EU’s legislation, the so-called *acquis communautaire*, in energy and related areas.” This originally involved the area of the Balkans, and later came to include such European Neighbourhood Policy states as Moldova, Ukraine and Georgia. See Talus, 2013, 246; Energy Community, *What We Do*, [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/ENERGY\\_COMMUNITY/What\\_we\\_do](https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/What_we_do) (Accessed 2018.09.18); Energy Community, *About Us: Parties*, [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/ENERGY\\_COMMUNITY/Stakeholders/Parties](https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Stakeholders/Parties) (Accessed 2018.09.20)

Communication from the Commission, *On Strengthening the European Neighbourhood Policy*, Brussels, 4 December 2006, COM (2006) 726, 8, 3.4, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0726:FIN:EN:PDF> (Accessed 2019.05.09)

[23] Pirani - Yafimava, 2017, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/02/Russian-Gas-Transit-Across-Ukraine-Post-2019-NG-105.pdf> (Accessed 2018.09.20)

[24] South Stream Transport, <http://www.gazprom.com/f/posts/85/290063/presentation.pdf> (Accessed 2018.09.18)

look for such alternative routes of supply,<sup>[25]</sup> with problems going back even to the 1990s, when the two countries had issues in relation to payment and diversion of gas to certain European countries.<sup>[26]</sup> In 2006 a dispute between the two in relation to a rise in gas prices led to a halt in Russian supplies to Ukraine,<sup>[27]</sup> which also led to a disruption in the supply of gas to other European countries.<sup>[28]</sup> In January 2009 there arose a dispute in relation to gas prices and transit fees, leading to Russia cutting its gas supplies to Ukraine, even with them completely coming to a halt.<sup>[29]</sup> Central and Eastern Europe experienced gas shortages for over two weeks due to this particular dispute.<sup>[30]</sup>

One alternative to Ukraine for the transportation of Russian gas is the Ostsee-Pipeline-Anbindungsleitung (OPAL) pipeline.<sup>[31]</sup> This is a pipeline which is designed to transport natural gas to the Czech Republic via Germany.<sup>[32]</sup> Specifically, it is the on-shore section of the Nord Stream 1 pipeline, which transports gas from Russia via the Baltic Sea.<sup>[33]</sup> In 2007 a joint venture company named Wingas, which is owned by Gazprom and Wintershall, applied to the German regulator Bundes Netz Agentur (BNA) for a 100 percent exemption for the OPAL pipeline according to Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas.<sup>[34]</sup> The article states that 'major new gas infrastructures, i.e. interconnectors between member states, LNG and storage facilities, may, upon request, be exempted from the provisions on third party access (TPA) (Art. 18, 19, 20) and tariffs (Art. 25.2, 25.3, 25.4)'.<sup>[35]</sup> Germany's energy regulator responded favorably to the application, ruling that the OPAL pipeline could receive an exemption.<sup>[36]</sup>

[25] Franza, 2015, [http://www.clingendaelenergy.com/inc/upload/files/CIEP\\_paper\\_2015-05\\_web\\_1.pdf](http://www.clingendaelenergy.com/inc/upload/files/CIEP_paper_2015-05_web_1.pdf) (Accessed 2018.09.12)

[26] Stern, 2006, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2011/01/Jan2006-RussiaUkraineGasCrisis-JonathanStern.pdf> (Accessed 2018.09.20)

[27] BBC News, *Ukraine and Russia reach gas deal*, 4 January 2006, <http://news.bbc.co.uk/2/hi/europe/4579648.stm>. (Accessed 2018.09.27).

[28] Ibid.

[29] BBC News, *Q & A: Russia-Ukraine gas row*, 20 January 2009, <http://news.bbc.co.uk/2/hi/europe/7240462.stm>. (Accessed 2018.09.27).

[30] Ibid.

[31] Loskot-Strachota, 2017, <https://www.osw.waw.pl/en/publikacje/osw-commentary/2017-01-17/opal-pipeline-controversies-about-rules-its-use-and-question> (Accessed 2018.11.19)

[32] Reuters, *Germany rules favourably on OPAL gas pipeline*, 25 February 2009, <https://uk.reuters.com/article/germany-energy-pipeline/germany-rules-favourably-on-opal-gas-pipeline-idUKLP84033820090225?sp=true> (Accessed 2018.09.12)

[33] General Court of the European Union PRESS RELEASE No 83/17 Luxembourg, 21 July 2017 Order of the President of the General Court in Cases T-849/16 R, T- 883/16 R and T-130/17 R PGNiG Supply & Trading GmbH, Poland, and PolskieGórnictwoNaftoweIGazownictwo S.A. v Commission, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-07/cp170083en.pdf> (Accessed 2018.09.12)

[34] Stanic, 2016, 35.

[35] Pirani - Yafimava, 2017, 3.

[36] Reuters, *Germany rules favourably on OPAL gas pipeline*, *ibid*

This decision was initially challenged by the European Commission in 2009, which decided that Gazprom could only use up to 50% of the OPAL pipeline's capacity.<sup>[37]</sup> However, later, in 2016, the Commission changed its position, allowing for a greater liberalization of the pipeline's access by third parties.<sup>[38]</sup> This would in effect allow Gazprom a greater share of the pipeline's use, specifically up to 80%, and possibly even up to 100%.<sup>[39]</sup> Poland subsequently challenged this 2016 decision, taking its case to the General Court of the European Union in order to annul the European Commission's decision with regards to this matter.<sup>[40]</sup> Poland was particularly concerned as it felt that the pipeline would threaten its role as a gas transit country and thus its influence on future issues relating to gas supply.<sup>[41]</sup> However, the court rejected the case, upholding the Commission's position.<sup>[42]</sup>

#### IV. NORD STREAM 2

Another prominent and current proposal for the transportation of Russian gas to the European Union is the Nord Stream 2 pipeline. The original Nord Stream pipeline is a twin pipeline system which goes through the Baltic Sea runs from Vyborg in the Russian Federation to Lubmin, Germany.<sup>[43]</sup> The Nord Stream pipeline runs through the Exclusive Economic Zones of Russia, Finland, Sweden, Denmark and Germany.<sup>[44]</sup> The pipeline system is 1,224 km long, and is the most direct connection between Russia's gas reserves and the European Union's energy market.<sup>[45]</sup> The Nord Stream 2 pipeline is to follow the same route as the original Nord Stream Pipeline, in order to bring natural gas from Russia to Germany.<sup>[46]</sup> It is to be over 1, 200 kilometers long.<sup>[47]</sup>

The pipeline has provoked strong reactions from various quarters, with a major argument being that it will increase Europe's dependence on Russian natural gas.<sup>[48]</sup>

[37] Order of the President of the General Court of 21 July 2017, Case T-849/16 R, EUR-Lex, [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62016TO0849\(02\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62016TO0849(02)) (Accessed 2018.09.27).

[38] *Ibid.*

[39] Norlen, 2017, <https://www.mckinseyenergyinsights.com/insights/the-lifting-of-opal-capacity-restrictions-leads-to-shifting-gas-flows-on-nord-stream/> (Accessed 2018.09.28).

[40] General Court of the European Union PRESS RELEASE No 83/17 Luxembourg, 21 July 2017, *ibid*

[41] Chee, 2017, <https://www.reuters.com/article/us-gazprom-europe-gas-court/eu-court-rejects-polish-bid-to-halt-opal-pipeline-deal-verdict-in-2019-idUSKBN1A625Z> (Accessed 2018.09.12)

[42] *Ibid.*

[43] Nord Stream, The Pipeline, <https://www.nord-stream.com/the-project/pipeline/> (Accessed 2018.09.13)

[44] *Ibid.*

[45] *Ibid.*

[46] Clean Energy Wire, Gas pipeline Nord Stream 2 links Germany to Russia, but splits Europe, Factsheet, 16 August 2018, <https://www.cleanenergywire.org/factsheets/gas-pipeline-nord-stream-2-links-germany-russia-splits-europe> (Accessed 2018.09.13)

[47] Gazprom, Nord Stream 2, <http://www.gazprom.com/projects/nord-stream2/> (Accessed 2018.09.13)

[48] Meliksetian, 2018, <https://oilprice.com/Energy/General/Can-Nord-Stream-2-Be-Stopped.html> (Accessed 2018.09.28)

Ukraine is particularly against the pipeline's construction, believing that it would have a strongly adverse effect on the country's economy due to it threatening its status as a gas transit country. For example, the Ukrainian Finance Ministry has made the statement that Nord Stream 2 could lead to a loss for the Ukrainian economy of up to 2.5 to 3 percent of its GDP.<sup>[49]</sup> The pipeline has also provoked opposition from Poland and the Baltic States, who believe that it will strengthen Russian influence in Europe.<sup>[50]</sup> Furthermore, the ramifications of the Nord Stream 2 pipeline project go beyond Europe. In particular, the United States of America has taken a very strong interest in the project, expressing strong opposition to it, with President Donald Trump publicly criticizing Germany for what he sees as the country's dependence on Russian gas.<sup>[51]</sup>

An important development in relation to the project was the European Commission's attempt to extend the European Union's gas rules to import pipelines,<sup>[52]</sup> though the Commission denied that this proposal was directed against Nord Stream 2.<sup>[53]</sup> The European Commission has stated that "Pipelines in the EU area must be built and operated in accordance with all applicable legislation. Nord Stream 2 cannot happen in legal void or exclusively according to the law of a third country. If built, this pipeline would need a legal framework that takes into account the key principles of EU energy market rules."<sup>[54]</sup> Furthermore, the Commission stated that these rules are connected to the Third Energy Package,<sup>[55]</sup> which "aims at maximizing competition between gas companies, avoiding conflict of interests between infrastructure operators and shippers and finally, to provide

[49] Interfax-Ukraine, *Finance Ministry: Ukraine to lose 2.5-3 percent of GDP over Nord Stream 2*, Kyiv Post, 26 September 2018, <https://www.kyivpost.com/ukraine-politics/finance-ministry-ukraine-to-lose-2-5-3-percent-of-gdp-over-nord-stream-2.html> (Accessed 2018.09.28).

[50] Daiss, 2018, <https://oilprice.com/Energy/Natural-Gas/Nord-Stream-2-Clears-Another-Hurdle.html>

[51] McBride, 2018, <https://oilprice.com/Energy/Natural-Gas/Nord-Stream-2-Clears-Another-Hurdle.html> (Accessed 2018.09.09)

[52] European Commission, Press Release, Energy Union: Commission takes steps to extend common EU gas rules to import pipelines, 8 November 2017, [http://europa.eu/rapid/press-release\\_IP-17-4401\\_en.htm](http://europa.eu/rapid/press-release_IP-17-4401_en.htm) (Accessed 2018.09.27).

[53] EurAsia Daily, European Commission "attacks" Nord Streams: no bans, but more complications, 8 November 2018, <https://eadaily.com/en/news/2017/11/08/european-commission-attacks-nord-streams-no-bans-but-more-complications> (Accessed 2018.09.27).

[54] European Commission, Fact Sheet, Questions and Answers on the Commission proposal to amend the Gas Directive (2009/73/EC), Brussels, 8 November 2017, [http://europa.eu/rapid/press-release\\_MEMO-17-4422\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-4422_en.htm) (Accessed 2018.09.17)

[55] The Third Energy Package is composed of two directives and three regulations, including Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC. The Third Energy Package basic aims are the improvement of the internal energy market's functioning and the solving of various structural problematic structural issues, which involves unbundling the energy sector, which is the separation of energy generation and supply from network operators. See European Commission: Market Legislation, <https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation> (Accessed 2018.09.17)

security of supply.”<sup>[56]</sup> However, the builders of Nord Stream 2 claim that the European Union’s internal gas market laws apply only to pipelines which transport gas within the internal market, and thus are not applicable to Nord Stream 2 pipeline, as it imports gas from outside of the territory of the European Union.<sup>[57]</sup>

The European Commission’s attempt was actually rebutted by the legal service of the Council of the European Union, which expressed the opinion that the European Union does not have the authority to apply its energy *acquis* to the offshore pipelines going through Member States’ Exclusive Economic Zone (EEZ).<sup>[58]</sup> Furthermore, it expressed the opinion that it may actually be in contradiction of United Nations law relating to the seas.<sup>[59]</sup>

Despite this, on 15 April 2019 the Council adopted an amendment to the European Union’s gas directive which stipulates that the European Union’s internal gas market rules are to apply to pipelines both going to and coming from third countries.<sup>[60]</sup> This will mean that the European Union’s energy regulations will apply to the Nord Stream 2 pipeline at the point that it enters into the territorial waters of Germany.<sup>[61]</sup> In response to this development, the Swiss company Nord Stream 2 AG owned by Gazprom, informed the European Union that it is considering the possibility of bringing investment dispute proceedings against it within the framework of the abovementioned Energy Charter Treaty, referring specifically to Article 26(1) of the Charter, which makes provision for relevant parties to amicably reach a settlement.<sup>[62]</sup> A key issue is that according to Article 49a of the amended directive pipelines can receive a derogation from the relevant EU regulations so long as the pipeline was completed before the coming into force of the amended directive.<sup>[63]</sup> Nord Stream 2 AG has requested that the pipeline

[56] European Commission, Fact Sheet, *ibid*

[57] Nord Stream 2, Questions and Answers: Nord Stream 2 – A new natural gas pipeline through the Baltic Sea, 2016, 12, <https://www.nord-stream2.com/media/documents/pdf/en/2018/07/brochure-questions-answers-en.pdf>, (Accessed 2018.09.01)

[58] Gotev, 2018, <https://www.euractiv.com/section/energy/news/industry-council-remove-nord-stream-2-hurdles/> (Accessed 2018.09.27); DIRECTIVE 2009/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC - compatibility with UNCLOS, <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vkmc8v3flkyl> (Accessed 2018.08.31)

[59] Reuters, EU legal blow to bid to regulate Russia’s Nord Stream 2 pipeline, 2018, <https://www.reuters.com/article/us-eu-gazprom-nordstream/eu-legal-blow-to-bid-to-regulate-russias-nord-stream-2-pipeline-idUSKBN1GH28D> (Accessed 2018.09.27).

[60] European Council/Council of the European Union, Council adopts gas directive amendment: EU rules extended to pipelines to and from third countries, Press Release, 15 April 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/04/15/council-adopts-gas-directive-amendment-eu-rules-extended-to-pipelines-to-and-from-third-countries/> (Accessed 2019.05.30)

[61] Talus – Hancher, 2019, <https://www.euractiv.com/section/energy/opinion/exploring-the-limits-of-eus-unbelievable-behaviour-on-nord-stream-2/> (Accessed 2019.05.30)

[62] *Ibid*.

[63] Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas (Text with EEA relevance), Article 49a, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0692> (Accessed 2019.05.30)



be treated as having been completed, though in a practical sense this has not occurred, however it claims that there has been a full commitment of investment.<sup>[64]</sup> If it does not receive such a derogation, it has stated that it will consider this as a discriminatory act against itself.<sup>[65]</sup>

To a certain extent this issue may be considered of interest in relation to the abovementioned proposals or models for a general legal framework to be created with regards to EU-Russia energy relations. It has already been mentioned that one possible model which has been discussed is Russia's adoption of the European Union's energy *acquis*. As has already been stated, such a model of energy relations does not conform to Russia's thinking on such matters. Also, in this case we also see that the Council of the European Union's own legal service rejected the proposal that the European Union has the ability in this particular situation to place its norms on this third country.

## V. CONCLUSION

It can be said that despite the existence of various tensions and differences, there have been at times decisions and policies from key quarters of the European Union that have in certain ways helped, to an extent, to maintain, in real practical terms, the close nature of European Union-Russia energy relations, particularly with regards to natural gas. Some critics even claim that in certain situations this contradicts the EU's official and public support for Ukraine within the context of that country's tensions with Russia.<sup>[66]</sup> However, in relation to the possibility of actually agreeing to a general legal framework acceptable to both parties which would govern their energy relations, the differing views as to what such a framework might look like, and the complexities in reaching such an agreement in this field which is by its very nature strongly connected to geopolitics, make this a difficult task. Furthermore, due to the complex nature of relations between the European Union and Russia at the moment, it appears even more unlikely that an all embracing legal framework regulating energy relations will be brought into being in the near future.

[64] Hall, 2019, <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/042419-nord-stream-2-invokes-energy-charter-treaty-to-challenge-eu-gas-link-rules> (Accessed 2019.05.30)

[65] Burbeza, 2019, <https://knect365.com/energy/article/1b4368d2-fe22-4276-b078-7bf17471193e/nord-stream-2-implications-of-the-eu-gas-directive-amendment> (Accessed 2019.05.31)

[66] Rapoza, 2017, <https://www.forbes.com/sites/kenrapoza/2017/08/04/on-russian-gas-front-germany-does-ukraine-no-favors/#27190483326e> (Accessed 2018.09.28).

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