

RIGA
GRADUATE
SCHOOL OF
LAW

VAFA MURADLI

THE LEGAL AND ECONOMIC FRAMEWORK
OF NATURAL GAS SUPPLY:
THE ROLE OF SHAH DENIZ STAGE 2

RGSL RESEARCH PAPER
No. 13

Riga Graduate School of Law

Established in 1998, the Riga Graduate School of Law (RGSL) has emerged as a leading legal education and research institute in the Baltic region. RGSL offers numerous study programmes in the area of International and European Law at bachelor and master's level and cooperates with the University of Copenhagen on a joint doctoral programme. The School benefits from partnerships with numerous leading European universities and cooperates closely with the University of Latvia, which is the major shareholder. In addition to its growing resident faculty, RGSL also benefits from the involvement of a large number of eminent scholars and practitioners based in the local environment, elsewhere in Europe, and overseas. The School is located in the *Art Nouveau* district of Riga and hosts an outstanding law library.

A primary objective of RGSL is to contribute to the development of Latvia and the wider region by educating new generations of motivated and highly skilled young scholars and professionals capable of contributing to the on-going process of European integration. Research and education in the area of international and European law are integral to the realisation of this objective.

The present series of Research Papers documents the broad range of innovative scholarly work undertaken by RGSL academic staff, students, guest lecturers and visiting scholars. Scholarly papers published in the series have been peer reviewed.

Editorial Board:

Editor-in-Chief:

George Ulrich (Ph.D)

Editorial Board:

Gudmundur Alfredsson (S.J.D.)

Frank Diedrich (Prof. Dr. iur. habil., MLE)

Kristīne Krūma (Ph.D)

Ineta Ziemele (Ph.D)

Assistants to the Editorial Board:

Ligita Gjortlere (M.Sci.Soc.)

Chris Goddard (M.Ed.)

About the author:

Vafa Muradli graduated from the Azerbaijan State University for Culture and Arts in 2013, Culture Management program. Moreover, she studied in the Business Law program at the Vienna University of Economics and Business and obtained her LL.M. in Law and Finance (with merit) from the Riga Graduate School of Law in 2015. Her main areas of interest include energy law and policy, external relations of the EU, and EU law. This is the publication, as a paper, of the author's Master's Thesis defended with excellence at the Riga Graduate School of Law in June, 2015.

Abstract

The paper deals with the issue of ensuring secure supplies of natural gas in the European Union (EU) with a special focus on the Shah Deniz Stage 2 development project and the Southern Gas Corridor (SGC) projects. The ongoing actuality of the topic is dictated by such factors as the EU's high consumption and import levels caused by its decreasing domestic production and the changing political preferences taking place from time to time deriving from tensions with Russia. Emerging as a continuous background throughout the last decade, gas crises have put the energy security issue on the EU agenda.

The paper considers its core issue from historical and current status perspectives, gives an insight into the legal basis of EU gas supply security, analyses the EU's relevant legal relations with its main gas suppliers, i.e. Russia, Norway, Algeria, and its future potential export partners from the Caspian region, in particular Azerbaijan. Moreover, the paper dedicates a scrutinized examination to the Shah Deniz Stage 2 development project and the three pipeline projects – the South Caucasus Pipeline (SCPX), the Trans-Anatolian Pipeline (TANAP), and the Trans-Adriatic Pipeline (TAP) – all being parts of the SGC, argues in favor of these projects and forecasts their future sustainability.

Table of contents

1. Overview of natural gas supply and its security in the EU	1
1.1. History of gas supply in the EU	1
1.2. Current status of the EU gas supply	3
1.3. Concept of the security of energy/gas supply	4
1.4. Possible risks to the security of gas supply	7
1.5. Concluding remarks	8
2. Legislation and policy for secure supply of natural gas in the EU	9
2.1. The European institutions and EU energy policy	9
2.2. Relevant documents and legislation.....	11
2.3. The role of the ECJ and its case-law in the development of energy supply security	15
2.4. Legal relations of the EU with the main natural gas-producing countries..	17
2.4.1. Russia	17
2.4.2. Norway.....	23
2.4.3. Algeria.....	24
2.4.4. Caspian Region: energy relations with Azerbaijan	26
2.5. Concluding remarks	29
3. Shah Deniz Stage 2 as the initial generator of the Southern Gas Corridor	31
3.1. Overview of the project.....	33
3.2. South Caucasus Pipeline Expansion (SCPX)	34
3.3. Trans-Anatolian Pipeline (TANAP).....	34
3.3.1. Infrastructure.....	35
3.3.2. Shareholders	35
3.4. Trans-Adriatic Pipeline (TAP)	36
3.4.1. Infrastructure.....	37
3.4.2. Shareholders	39
3.5. TANAP and TAP advantages over Nabucco.....	40
3.6. Concluding remarks	42
Conclusions.....	43

1. Overview of natural gas supply and its security in the EU

In view of natural gas becoming one of the European Union's (EU) preferred sources of energy, matters concerning its security of supply have been growing in importance. This tendency is further intensified through high EU import levels. The following chapter will first provide a historical observation of European natural gas supply so as to get a comprehensive picture of its evolution. Subsequently, the status quo of the EU gas market will be analyzed. Finally, before taking a closer look at the potential risks to gas supply security, various definitions of this term will be put forward to specify its true meaning and significance.

1.1. History of gas supply in the EU

Natural gas differs from oil and, correspondingly, the historical development of gas markets is different from those of oil. First of all, there is no global natural gas market as opposed to that of oil. More precisely, over the years *regional* markets for gas have evolved as a result of that commodity's comparatively high transport costs. Such regional characteristics are owed to its initial process of formation.

In Europe, the first gas consumption goes back to the 19th century when gas produced was initially used for the production of light and later on for cooking. During this period of time, the market was not regulated, and manufacturing enterprises were privately owned. At the beginning of the 20th century, the first pipelines were constructed in order to transport coal gas¹, also known as "town gas". Throughout the century, the production of coal gas was gradually substituted with electricity, petroleum and, ultimately, natural gas. Thenceforth, the process of natural gas development was launched. The first gas fields in Europe were discovered in Italy in 1938 followed by smaller gas fields found in the 1950s in the Netherlands and Germany.² The biggest and most significant discovery, however, was made in 1959 with the Dutch Groningen field that emerged with time to become a monopoly-supplier delivering gas to up to seven Western European countries. These first cross-border pipeline transportations can be identified as the commencement of the European natural gas market.³ The United Kingdom (UK) presented an exception in the earlier periods since pipelines could not reach the island. For this purpose, the energy company "Shell" developed a technique for transporting cooled gas in a liquid state by means of tankers, which enabled the delivery of liquefied natural gas (LNG) to the UK from 1959.⁴

¹ Before development of a natural gas supply system, almost all fuel and lighting gases were manufactured in the process of coal-coking.

² Schumacher, Thomas. 2011. *Vertikale Integration im Erdgasmarkt: eine industrieökonomische Betrachtung* (translation: Vertical integration in the natural gas market: an industrial-economic view), Wiesbaden: Gabler. (Schumacher 2011, p. 136)

³ Bothe, David and Andreas Seeliger. 2005. "Forecasting European Gas Supply: Selected Results from EUGAS Model and Historical Verification", *EWI (Energiewirtschaftliches Institut an der Universität zu Köln) Working Paper, Nr 05.01*. (Bothe and Seeliger 2005, p. 7)

⁴ Schumacher 2011, *supra* note 4, p. 136.

The oil crisis of 1973 provoked a sharp increase in European gas demand and gave rise to oil's replacement by gas in heating and the electricity sector. Consequently, during the 1970s, the number of gas-importing states in Western Europe grew to eleven. This tendency went further upwards through the discovery of new fields in the North Sea, predominantly in Norway and the UK but also in Danish and Dutch offshore fields. The fields found in the UK met only the country's internal demand, whereas with the development of two offshore pipelines in Norway, namely Norpipe and Frigg, the country turned into an energy-supplying country and exported its gas to the UK and continental Europe.⁵ From 1970 to 1980, EU gas production experienced a considerable increase from 102 billion cubic meters (bcm) to 197 bcm.⁶ However, while consumption rates gradually grew and production remained static, only later did the significance of imports become more evident to Europe. At this time, another important gas supplier, namely the former Soviet Union, entered the European gas market. The first Soviet gas pipeline reaching Europe was the 4500 km long Brotherhood (Bratstvo) or Urengoy-Pomary-Uzhgorod pipeline delivering gas to Czechoslovakia and from there on to Western Europe.⁷ The very fact of Soviet gas deliveries to Europe aroused severe criticism from the United States of America (USA) on the basis that the Soviets "could use gas supplies to leverage influence in Europe, weakening NATO and the ability to manage the Cold War."⁸

Despite this, gas exports from the Soviet Union to Europe continued to grow throughout the 1980s. Simultaneously, Algeria increased its LNG capacities so as to provide gas to more import terminals located in France, Belgium, and Spain. Moreover, the Algerian Transmed pipeline enabled the country's connection to the European pipeline system. As a consequence of all this, the Netherlands slowly gave up its position as the prevailing gas supplier. Nevertheless, owing to advantageous production terms at the Groningen field and the country's close location to the main gas consumers, the Netherlands has kept its role as a swing-supplier⁹ to date.¹⁰

The 1998 EU Gas Directive highlighted the essence of European gas market development. Even though the subsequent political process mostly addressed market structures and liberalization, the following years presented significant supply-related changes as well. These were targeted towards the diversification of import sources in the majority of European states. As a result, more distant countries, such as Trinidad & Tobago, Nigeria, Qatar, Oman, the UAE (all via LNG) and Iran (via pipeline to Turkey) began exporting to Europe. In spite of these new suppliers to the market,

⁵ Bothe and Seeliger 2005, *supra* note 5, pp. 7-8.

⁶ Stevens, Paul. 2010. "History of Gas", POLINARES (EU Policy on Natural Resources) Working Paper, No. 5. (Stevens 2010, p. 11)

⁷ Vavilov, Andrey. 2015. *Gazprom: An Energy Giant and Its Challenges in Europe*, Basingstoke, Hampshire: Palgrave Macmillan. (Vavilov 2015, pp. 73-74)

⁸ Stevens 2010, *supra* note 8, p. 11.

⁹ A "swing-supplier" or "swing-producer" is able to exert its impact on prices and balance out market fluctuations through altering supply of the respective commodity. An example of a swing-supplier is Saudi Arabia, which consciously restricts its oil production in attempting to maintain a balance between demand and supply.

¹⁰ Bothe and Seeliger 2005, *supra* note 5, p. 8.

the most substantial amounts of gas were still coming from Algeria, Russia, and Norway.¹¹

1.2. Current status of the EU gas supply

Being unable to supply itself solely from its own internal energy sources, the EU emerged as the world's largest energy importer. According to the latest statistics, the EU imports 53% of its energy, the total costs of which amount to approximately 400 billion Euros.¹² As regards import dependency, oil (almost 90%) is the EU's most significant energy resource, followed by natural gas (66%), solid fuels (42%), and nuclear fuel (40%).¹³

EU Member States	Bcm	EU Member States	Bcm
Austria	8.3	Italy	68.7
Belgium	17.0	Latvia	1.4
Bulgaria	2.5	Lithuania	2.6
Croatia	2.8	Luxembourg	1.3
Cyprus	0	Malta	0
Czech Republic	8.1	Netherlands	40.3
Denmark	3.3	Poland	16.3
Estonia	0.7	Portugal	4.3
Finland	3.4	Romania	11.6
France	46.1	Slovakia	5.1
Germany	88.5	Slovenia	0.7
Greece	3.8	Spain	30.9
Hungary	9.3	Sweden	1.1
Ireland	4.6	United Kingdom	79.2

Table 1. European Natural Gas Consumption in 2013. Source: Own illustration based on data from Eurogas.¹⁴

With respect to consumption, here oil holds its dominant position as well, reaching 33.8% of total energy consumption. While solid fuels comprise 17.5%, nuclear energy and renewables amount to 13.5% and 11% respectively. Due to its rising popularity, natural gas has been able to increase its share in the EU energy mix to become its second important energy source and making up 23.3% of energy

¹¹ *Ibid*, pp. 8-9.

¹² European Commission 2015b, *infra* note 107, p. 2.

¹³ European Commission 2014a, *infra* note 102, p. 1.

¹⁴ *Ibid*.

consumption.¹⁵ In 2013, the EU consumed about 462 bcm of gas.¹⁶ The consumption level varied from one Member State to another (see Table 1). The biggest gas consumers within the EU were Germany, the UK, Italy, France, the Netherlands, and Spain. Germany, the UK, Italy, and France alone consumed 282.5 bcm of gas, which represented more than half of the EU's total gas consumption. Within the 28 Member States only the above seven states consumed over 30 bcm of gas. The consumption rates of the following three countries lay within the range of 10 to 20 bcm: Romania, Poland, and Belgium. Accounting for 13.7% of EU's total gas consumption, the remaining 18 states lagged considerably behind.

1.3. Concept of the security of energy/gas supply

The growing significance of energy security has brought its content into the spotlight of the energy agenda worldwide. Yet no common point of view exists on defining the concept of energy supply security, as various experts underline. In their article Löschel et al. (2010) state: "The concept of 'security of energy supply', or in short form 'energy security', seems to be rather blurred."¹⁷ Checchi et al. (2009) adhere to the same opinion finding that "there is no common interpretation" for the concept of energy security.¹⁸ Moreover, Chester (2010) claims that this concept is "inherently slippery".¹⁹

At this point, it should be noted that the literature examined below with respect to energy security can also be related and applied to the security of natural gas supply. Therefore, by referring to "energy security" in this section, the author also implies "natural gas security".

So, different sources bring different contrasting interpretations to the energy security concept. One of these involves the distinction between economic and political views on the matter. According to economists, energy issues are to be regulated by the market only, pushing aside political or authority factors. This notion is aimed at reinforcing market activities, allowing governmental interventions solely in situations of market failure. Chester (2010) reflects:

¹⁵ European Commission. 2014b. *EU Energy in Figures: Statistical Pocketbook 2014*, Luxembourg: Publications Office of the European Union. Available at: http://ec.europa.eu/energy/sites/ener/files/documents/2014_pocketbook.pdf. Last visited 28.04.2015. (European Commission 2014b, p. 42)

¹⁶ Eurogas. *Drop in 2013 EU gas demand emphasises need for swift change*, p. 2. Available at: http://www.eurogas.org/uploads/media/Eurogas_Press_Release_-_Drop_in_2013_EU_gas_demand_emphasises_need_for_swift_change.pdf. Last visited on 25.05.2015.

¹⁷ Löschel, Andreas, Ulf Moslener, and Dirk T.G. Rübbecke. 2010. "Indicators of Energy Security in Industrialised Countries", *Energy Policy*, Vol. 38, Issue 4, pp. 1665–1671. (Löschel et al. 2010, p. 1665)

¹⁸ Checchi, Arianna, Arno Behrens, and Christian Egenhofer. 2009. "Long-Term Energy Security Risks for Europe: A Sector-Specific Approach", *Centre for European Policy Studies (CEPS) Working Document, No. 309*. (Checchi et al. 2009, p. 1)

¹⁹ Chester, Lynne. 2010. "Conceptualising Energy Security and Making Explicit Its Polysemic Nature", *Energy Policy*, Vol. 38, Issue 2, pp. 887–895. (Chester 2010, p. 893)

[A]s a consequence of the 'liberalisation' of energy markets, energy security (and insecurity) is a market outcome, determined by the operation of the market and thus can only be defined in market terms.²⁰

In the words of Barton et al. (2004), energy security is:

...a condition in which a nation and all, or most, of its citizens and businesses have access to sufficient energy resources at reasonable prices for the foreseeable future free from serious risk of major disruption of service.²¹

An opposite opinion is represented by foreign policy advocates, who argue that growing nationalization of energy resources and the politicization of energy management by energy producing states have turned energy security into a national security concern. To their mind, the market on its own cannot handle the multiplex challenges that energy-importing countries have to deal with. For this reason, energy security necessitates collaboration on an international level, state intervention, and military control.²² As noted in the Green Paper (2000), which will be addressed in more detail in Chapter 2, energy security must be geared to guaranteeing:

...the proper functioning of the economy, the uninterrupted physical availability (...) at a price which is affordable (...) while respecting environmental concerns... Security of supply does not seek to maximise energy self-sufficiency or to minimise dependence, but aims to reduce the risks linked to such dependence.²³

In the World Energy Assessment report (2004) of the United Nations Development Programme, energy security is defined as:

...a term that applies to the availability of energy at all times in various forms, in sufficient quantities, and at affordable prices, without unacceptable or irreversible impact on the environment.²⁴

Separating the economic perspective from the political one and vice versa would not make much sense. Indeed, both perspectives perfectly supplement each other and are deemed to shed light onto the security of supply-related issues.

Another differentiation between scholars on conceptualizing energy security lies in their approaching it from an importers' and exporters' angle. The tendency in the literature is to focus more on the energy security of importers than of exporters. The reason for this is to be found in the majority of authors dealing with energy security matters of the West, which consists predominantly of importing states. This paper also sticks to that tendency as it will analyze the energy security of the EU as

²⁰ *Ibid*, p. 889.

²¹ Barton, Barry, Catherine Redgwell, Anita Ronne, and Donald N. Zillman. 2004. *Energy Security: Managing Risk in a Dynamic Legal and Regulatory Environment*, New York: Oxford University Press. (Barton et al. 2004, p. 5)

²² Checchi et al. 2009, *supra* note 20, p. 1.

²³ European Commission 2000, *infra* note 54.

²⁴ United Nations Development Programme. 2004. *World Energy Assessment*, p. 42. Available at: <http://www.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/sustainable-energy/world-energy-assessment-overview-2004-update/World%20Energy%20Assessment%20Overview-2004%20Update.pdf>. Last visited on 27.05.2015.

an importer as well. However, both sides of energy security will be briefly compared below in order to determine what each of the parties understands under this term.

From the importers' viewpoint, energy security relates to cases when countries do not experience a lack of energy and are able to cover their energy demand at no additional cost and without negatively impacting the environment. As defined by Von Hirschhausen (2005), energy security is:

...a state where the risks related to high dependence on energy imports, political instability in producing and/or transit countries, as well as of other adverse contingencies, are mastered at reasonable economic costs.²⁵

For importing states energy security implicates secure supplies (sustainable access to energy resources), striving for diversified supply sources, suppliers, and routes of supply so as to lower the risks linked to any sort of dependence.²⁶

In contrast to importers, exporters perceive energy security as security of demand at adequate prices ensuring notable revenues for the exporter without causing harm to the environment. Besides, matters lying within the exporters' scope of interests involve preventing diversification of energy sources and suppliers. According to Mares' (2010) interpretation of energy security, it "embodies a claim for government action to protect national economic activity from shocks emanating from the international market."²⁷ In that respect, a statement by President Vladimir Putin (2006) finds its proper place:

[Y]ou want security of supply and we want security of demand. But that is just one way of covering up a vast and complex set of disagreements.²⁸

Trying to consolidate the above two perspectives, the most accurate definition would be the consideration of energy security as a solid balance between energy supply and demand, aiming to enhance sustainable economic and social development for importers as well as exporters. Under this interpretation, the energy field can be regarded as a system with an active interrelation between both exporters and importers with the aim of meeting their needs. Most significantly, the interests of both sides are to be observed from a cooperative angle, not from a conflictive one.²⁹

In light of the discussion so far, it can be inferred that, basically, energy or natural gas security involves two main elements – one that relates to price and the other to availability. Put differently, gas has to be physically and uninterruptedly

²⁵ Hirschhausen, Christian von. 2005. "Strategies for Energy Security – A Transatlantic Comparison", *Globalization of Natural Gas Markets Working Papers, WP-GG-14*. (Hirschhausen 2005, p. 2)

²⁶ Proedrou, Filippou. 2011. *EU Energy Security in the Gas Sector: Evolving Dynamics, Policy Dilemmas and Prospects*, Farnham, Ashgate. (Proedrou 2011, p. 3)

²⁷ Mares, David R. 2010. "Resource Nationalism and Energy Security in Latin America: Implications for Global Oil Supplies", *James A. Baker III Institute for Public Policy Working Paper*. Available at: <http://bakerinstitute.org/media/files/Research/edacf0ea/EF-pub-MaresResourceNationalismWorkPaper-012010.pdf>. Last visited on 27.05.2015. (Mares 2010, p. 9)

²⁸ Ostry, Sylvia. 2008. "Sustainable Development and Energy Security: The WTO and the Energy Charter Treaty", paper presented at the Pre-G8 Conference, Moscow, June 30. (Ostry 2008, p. 13)

²⁹ Proedrou 2011, *supra* note 28, p. 4.

available in sufficient volumes and at a competitive price. Moreover, the definitions provided in this section also implicate a secure and reliable supply for upcoming years.

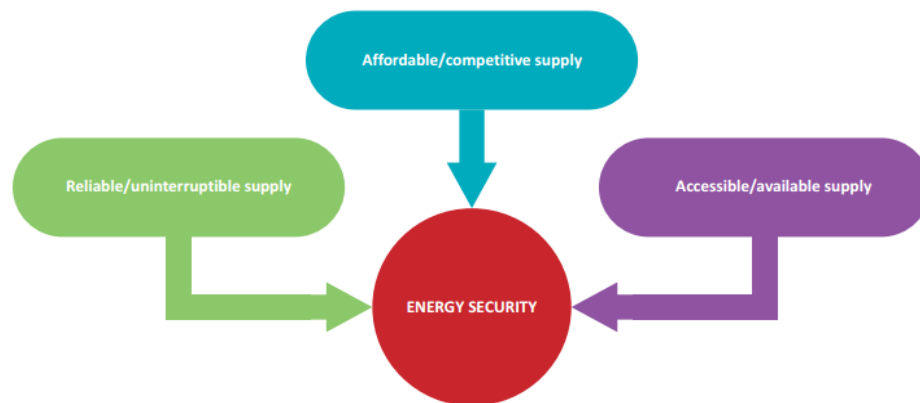


Figure 1. Defining Energy Security. Source: IEA.³⁰

1.4. Possible risks to the security of gas supply

As a rule, scholarly works differentiate between short-term and long-term risks.³¹ The former are usually related to supply shortages resulting from accidents, extreme weather conditions, terrorist attacks or technical grid failures. Such risks are sometimes also identified as “operational security” or “systems security”. Long-term security refers to the availability of energy supply in sufficient amounts that enables stable and sustainable economic development. This kind of supply security involves adequacy of transport infrastructure and grids, quality of systems management, including pricing mechanisms and mitigation of market power.³² We can distinguish between the following types of risks:

- **Technical risks** relate to system failure stemming from lack of capital investment, unfavorable weather conditions or overall poor conditions of the energy system.
- **Economic risks** predominantly cover supply-demand imbalance caused by lack of investment or insufficient contracting.
- **Political risks** include possible government decisions to postpone deliveries due to well-weighed policies, war or civil strife. Moreover, this kind of risk can be provoked by failed regulation that is known as “regulatory risk”.

³⁰ International Energy Agency. 2014. *Energy Supply Security 2014*. Available at: https://www.iea.org/media/freepublications/security/EnergySupplySecurity2014_PART1.pdf. Last visited on 27.05.2015. (International Energy Agency 2014, p. 14)

³¹ *Ibid*, p. 13. See also Stern, Jonathan. 2002. “Security of European Natural Gas Supplies”, *The Royal Institute of International Affairs*. Available at: http://www.bgc.bg/upload_files/file/Security_of_Euro_Gas_.pdf. Last visited on 25.05.2015. (Stern 2002, p. 6)

³² Checchi et al. 2009, *supra* note 20, p. 4.

- **Environmental risks** concern the potential damage resulting from accidents (e.g. oil spills, nuclear accidents) and including pollution, the impact of which is less foreseeable and perceptible (e.g. greenhouse gas emissions).³³
- **Geological risks** describe the potential depletion of an energy source that could present an issue of concern for the future availability of resources.³⁴

Another pertinent differentiation drawn between risks relates to the EU's confrontation with external and internal energy security risks. External risks include all matters regarding energy import dependence, such as geopolitical challenges, international transit, and upstream technical issues in non-EU states. Internal risks, in turn, comprise uncertainties linked to EU energy demand, infrastructure, energy policy orientations, and institutional elaboration.³⁵

Based on the above given risks, it can be seen that security of supply is embraced by a variety of potential threats, with import dependence on politically unstable states being one of them. Hence, it is of utmost importance, first of all, to detect the precise nature of the risk and evaluating its possible consequences (i.e. risk assessment) so as to find an adequate solution. The next important step is to identify potential responses and responsible actor(s) (i.e. risk management).³⁶

With respect to natural gas and, in particular, the EU's dependence on Russia, the risks related to import dependency can be lowered through several general, widely-known (horizontal) measures. Along with the widest possible diversification by region or fuel, these risks also comprise storage requirements, mutual solidarity, and the development of LNG. In quest of enhancing security and providing greater flexibility within the gas markets, such measures as network optimization and functional improvement of internal gas markets should be taken.³⁷

1.5. Concluding remarks

Completion of this chapter brings the reader closer to an understanding of the issues that the paper will deal with in its subsequent chapters. Having started with a historical overview, the author shows the long chain of European gas supply development and the evolution of a European gas market from the early years of its emergence until today. As a next step, the current situation dominating the actual gas markets in the EU was explained. It has been shown in figures that natural gas ranks as the EU's second important energy source after oil. Using and comparing different points of view on the concept of security of energy and gas supply, this chapter further considered the potential risks threatening this security concept, whereby the most notable risks were formulated and observed. The possible risk mitigations consider among other things the development of networks, which will be given greater focus in this paper.

³³ Egenhofer, Christian. 2007. "Integrating Security of Supply, Market Liberalisation and Climate Change". In *Readings in European Security, Volume 4*, ed. Michael Emerson, Brussels: CEPS Paperbacks. (Egenhofer 2007, pp. 83-84)

³⁴ Checchi et al. 2009, *supra* note 20, p. 3.

³⁵ *Ibid*, p. 4.

³⁶ Egenhofer 2007, *supra* note 35, p. 84.

³⁷ *Ibid*.

2. Legislation and policy for secure supply of natural gas in the EU

Throughout recent decades, the problem concerning a secure natural gas supply in the EU Member States has generated active processes in their politics and, thus, has become one of the core issues of the EU energy policy and decision-making process. As will be demonstrated in the following chapter, aside from each Member State's own energy policy on a domestic level the EU also has both internal and external energy policies. These policies exercise their impact over the present and future supply of natural gas in the EU. Besides, the existence of such internal and external energy policies in the EU is part of the Member States' political integration and development, which surely will further undergo some alterations.

2.1. The European institutions and EU energy policy

The influence of supranational institutions plays an important role in building a common European energy policy. The active drivers that are in charge of EU energy policy regulation are the European Parliament, the Council of the European Union (the Council) and most importantly the European Commission.

The EU Parliament and the Council are the primary institutions in the EU legislative process. The structure of the EU Parliament is made up of political factions, whereas the decision-makers form their conclusions relating tightly to their countries of origin. Hence, there is a difference between the decision-making process of the EU Parliament and that of the national parliaments. Coalitions may be shaped across faction principles; however, political views have a deep impact on energy policy.³⁸ Issues dealing with energy policy within the European Parliament are managed by the *Industry, Research and Energy Committee*. Among other things, the Committee handles the security of EU energy supply, energy efficiency as well as enhancement of trans-European networks in the sphere of energy infrastructure.³⁹

Involving one minister from each Member State in the respective sphere (Ministers for Energy in this case), the Council substantially concentrates on representing the Member States' interests.⁴⁰ This means that the Council is responsible for aligning opinions of EU Member States on matters concerning primarily energy policy. In cooperation with the European Parliament, the Council adopts legislation regulating the functioning of energy markets; moreover, it provides a secure energy supply, and facilitates energy efficiency as well as the interconnection of energy networks.⁴¹

³⁸ Langsdorf, Susanne. 2011. "EU Energy Policy: From the ECSC to the Energy Roadmap 2050", *Green European Foundation*. Available at: http://gef.eu/uploads/media/History_of_EU_energy_policy.pdf. Last visited on 11.04.2015. (Langsdorf 2011, p. 4)

³⁹ European Parliament. *Industry, Research and Energy*. Available at: <http://www.europarl.europa.eu/committees/en/itre/home.html>. Last visited on 12.01.2015.

⁴⁰ Langsdorf 2011, *supra* note 1, p. 3.

⁴¹ Council of the European Union. *Transport, Telecommunications and Energy*. Available at: <http://www.consilium.europa.eu/policies/tte?lang=en>. Last visited on 12.01.2015.

An essential part in forming EU energy policy rests upon the European Commission. Worth mentioning here is the Directorate-General for Energy (DG Energy) currently managed by Maroš Šefčovič (Vice-President for Energy Union), Miguel Arias Cañete (Commissioner Energy/Climate) and Dominique Rostori (Director-General).⁴² The Commission's main targets include, for example, creation of an energy market with accessible energy and competitive prices; provision of sustainable energy transport; encouragement of a secure energy supply. By implementing its activities, DG Energy evolves strategic analyses and policies, enhances the internal energy market, refines the energy infrastructure, furthers and carries out EU external energy policy.⁴³ Obviously, such activities by DG Energy may overlap with those of *DG Competition* or *DG Internal Market, Industry, Entrepreneurship and SMEs*, which implies the impact of these Directorates-General on European energy policy as well.

Having signed the Single European Act in 1986 and, thus, having set up a common European market, the European Commission strives towards steady and constant reformation of the unified internal market. In this way, the Commission intends to transform separate domestic monopolies on energy into a common market with numerous corporate players acting in it, unhindered trade, and free movement of goods. Furthermore, the Commission is in charge of controlling the entry of non-EU companies (like Statoil or Gazprom) into the EU internal market and their compliance when operating within it. Last but not least, the Commission pursues development of the INOGATE (INterstate Oil and GAs Transportation to Europe)⁴⁴ energy program linking the EU with foreign suppliers including littoral states (Black and Caspian Sea regions) and their neighbors. Thereby, the Commission has the competence to foster the building of new pipelines and energy facilities leading to enhancement of European energy security.⁴⁵

What is more, with a view to enhancing the EU's import infrastructure, the Commission developed the idea of the "Southern Gas Corridor", which has its perspective in further diversifying the routes and sources of EU natural gas supplying it with gas from the Caspian region and Central Asia. In this way, the EU expects to somehow minimize dependence on Russian gas.⁴⁶ Being part of the "Southern Gas Corridor" the Shah Deniz Stage 2 project is its initial and one of the major projects the realization of which will greatly contribute to the security of EU natural gas supply. A detailed handling of the Shah Deniz Stage 2 project will be given in Chapter 3.

⁴² European Commission. *Mission statement of DG Energy*. Available at: http://ec.europa.eu/dgs/energy/mission_en.htm. Last visited on 03.04.2015.

⁴³ *Ibid.*

⁴⁴ INOGATE. About INOGATE. Available at: <http://www.inogate.org/pages/1?lang=en>. Last visited 24.04.2015.

⁴⁵ Proedrou 2011, *supra* note 28, p. 51.

⁴⁶ Jarosiewicz, Aleksandra. 2012. "Southern Gas Corridor managed by Azerbaijan and Turkey", *Centre for Eastern Studies Commentary*, Issue 86. (Jarosiewicz 2012, p. 1)

2.2. Relevant documents and legislation

In recent years, the Commission has designed several documents arranging a common energy policy for the EU, which will be described below. These documents reflect different aims, strategies, principles and challenges in building upcoming EU energy policy. Besides, the Treaty of Lisbon as well as various directives and regulations will also be considered as important sources in dealing with the issue of natural gas supply in the EU.

Green Paper 2000 "Towards a European Strategy for Energy Supply Security": Issued in 2000, the Green Paper⁴⁷ reflected actual and future problems of EU security of energy supply and proposed certain steps to solve them. According to Haghighi (2007), this paper was perceived as "the most important document reflecting the major concerns of Europe with respect to this security".⁴⁸

With its Green Paper 2000 on security of supply the Commission made efforts to frame ongoing energy policy and detect its present and upcoming flaws. In addition, this document covers trends linking internal and external energy policies and supports them with proper management.⁴⁹ Moreover, the Green Paper 2000 is concerned with securing energy supply in order to enable an adequate working-process for the economy, continuous physical accessibility at suitable prices at the same time as considering environmental conditions.

Green Paper 2006 "A European Strategy for Sustainable, Competitive and Secure Energy": In 2006 the Commission released another Green Paper, which did not differ much from the previous Green Paper but rather united the objectives of old and new views on energy policy. The core issue of the Green Paper 2006 is the Member States' capability to enhance their power by maintaining and securing their interests while collaborating with each other. Intending to establish an up-to-date energy landscape, the EU possesses sufficient political potential, aside from its immense size.

With the appearance of this document the Commission underlined its intention to achieve its outlined objectives concerning EU energy policy. So, as stated in the Green Paper 2006, European energy policy should have three main objectives – sustainability, competitiveness, and security of supply.⁵⁰ In the search for security of supply, among other things, the EU puts stress on the diversification of sources

⁴⁷ European Commission. 2000. Green Paper – Towards a European Strategy for the Security of *Energy Supply*, COM/2000/0769 final, Brussels. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0769:EN:HTML>. Last visited on 04.04.2015.

⁴⁸ Haghighi, Sanam S. 2007. *Energy Security: The External Legal Relations of the European Union with Major Oil and Gas Supplying Countries*, Oxford: Hart Publishing. (Haghighi 2007, p. 159)

⁴⁹ Haase, Nadine. 2008. "European gas market liberalisation: Are regulatory regimes moving towards convergence?", *Oxford Institute for Energy Studies*, NG24. Available at: <http://doc.utwente.nl/67281/1/Haase08european.pdf>. Last visited on 04.04.2015. (Haase 2008, p. 136)

⁵⁰ *Ibid*, at p. 17.

and routes of energy supply.⁵¹ In this regard, the Caspian region is cited as an example for enabling provision of natural gas to the EU through new gas pipelines.⁵²

The Communication from the Commission to the European Council and the European Parliament of 10 January 2007, "An Energy Policy for Europe": Issued by the Commission in January 2007, this document presents a wide range of European energy policy steps in areas such as climate protection and strives to set up a natural gas market, paying attention to enhancement of security of supply in the EU to the greatest possible extent. The Commission's communication provides a strategic review of the energy situation in the EU and encompasses the EU Energy Action Plan 2007-2009.⁵³

In this Action Plan such important matters as security of energy supply and handling possible crises are tackled. One of the central issues with respect to security of supply implies making enough effort towards strengthening the EU's bilateral collaboration with all suppliers and securing energy imports to the EU. From this it follows that it is necessary to lay out concrete directions to make European international energy policy work as a well-coordinated mechanism. Focusing on the establishment of energy-oriented relations with the EU's neighboring countries represents one of its primary preferences. Additionally, it is of significance in preventing potential interruptions or subversions of energy infrastructure located outside the EU frontier. Amongst other important instances are the strengthening of EU-Russia relations by developing an expansive framework agreement and the evolution of cooperation with major energy suppliers as well as transit states.⁵⁴

EU Energy Security and Solidarity Action Plan – 2nd Strategic Energy Review: In November 2008, the Commission published an Energy Security and Solidarity Action Plan⁵⁵ – a comprehensive energy package targeted at fostering energy security in the EU. This Action Plan considers six main points for a secure energy supply: 1) processing a Baltic interconnection plan that connects that region with other EU regions; 2) establishing a Southern Gas Corridor supplying the EU with gas from the Caspian and Middle Eastern regions; 3) providing Member States directly or indirectly (via other Member States based on solidarity arrangements) with LNG; deliberately thinking over an LNG Action Plan; 4) creating a Mediterranean energy ring binding the Southern Mediterranean region with the rest of the EU by means of solid electricity and gas interconnections; 5) evolving North-South gas and electricity interconnections within Central and South-East Europe; 6) designing a

⁵¹ *Ibid*, at p. 18.

⁵² *Ibid*, at p. 15.

⁵³ European Commission. 2007. Communication from the Commission to the European Council and the European Parliament on An Energy Policy for Europe, Com(2007)1 final, Brussels. (European Commission 2007)

⁵⁴ Triantaphyllou, Dimitrios. 2007. "Energy Security and Common Foreign and Security Policy (CFSP): The Wider Black Sea Area Context" *Southeast European and Black Sea Studies, Vol. 7, No. 2, pp. 289-302*. (Triantaphyllou 2007, p. 295)

⁵⁵ European Commission. 2008b. *Second Strategic Energy Review: An EU Energy Security And Solidarity Action Plan*, COM(2008) 781 final, Brussels. (European Commission 2008b)

draft for a North Sea offshore grid to enable interconnections between the national electricity grid and a connection to scheduled offshore wind projects.⁵⁶

This paper mainly focuses on the second point. However, in general terms, it can be advanced that the six points altogether are thought to lead to a higher level of security, diversity of sources, and to further energy routes, while at the same time improving the whole infrastructure of energy supply in the EU.

The Third Internal Energy Market Legislative Package: Adopted in 2009, the objective of the third legislative package was to enhance the efficiency of the energy market and integration of the single EU gas and electricity market. This, in turn, was expected to maintain prices at the lowest possible level and raise the quality of service as well as security of supply.⁵⁷

The package comprises two directives on the electricity and gas markets as well as two regulations on conditions for accessing those markets. The third regulation of the package deals with creating an Agency for the Cooperation of Energy Regulators.⁵⁸

The Gas Directive⁵⁹ creates common rules for transmitting, distributing, storing and supplying natural gas. The scope of the gas regulation⁶⁰ involves rules on non-discrimination for entry terms to natural gas transmission systems striving to provide adequate performance of the internal natural gas market along with setting rules on non-discrimination for entry terms to LNG facilities and storage facilities.

The last regulation of the third package⁶¹ establishes an Agency for the Cooperation of Energy Regulators. The Agency aims to support and coordinate national regulatory bodies in carrying out, at EU level, regulatory activities operated

⁵⁶ European Commission. 2008a. *EU Energy Security and Solidarity Action Plan: 2nd Strategic Energy Review*, MEMO/08/703, Brussels. Available at: <http://europa.eu/rapid/press-release MEMO-08-703 en.htm>. Last visited on 25.04.2015. (European Commission 2008a, p. 2)

⁵⁷ European Commission. 2011. *Questions and Answers on the third legislative package for an internal EU gas and electricity market*, Press release, MEMO/11/125, Brussels. Available at: <http://europa.eu/rapid/press-release MEMO-11-125 en.htm?locale=en>. Last visited on 11.04.2015. (European Commission 2011, p. 1)

⁵⁸ Council of the European Union. 2009a. *Council adopts internal energy market package*, Press release, 11271/09 (Presse 191), Luxembourg. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/108740.pdf. Last visited on 11.04.2015. (Council of the European Union 2009a, p. 1)

⁵⁹ 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, OJ L 211, 14.8.2009, pp. 94–136. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0073>. Last visited on 07.04.2015. (Directive 2009/73 /EC)

⁶⁰ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0715>, OJ L 211, 14.8.2009, pp. 36–54. Last visited on 07.04.2015. (Regulation (EC) No 715/2009)

⁶¹ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0713>. Last visited on 07.04.2015. (Regulation (EC) No 713/2009)

in the Member States for enhancement of the internal market. The Agency, commonly known by the acronym ACER, sits in Ljubljana, Slovenia.

Treaty of Lisbon: Entering into force in December 2009, the Lisbon Treaty modified the Treaty on the European Union (TEU) and the Treaty establishing the European Communities (TEC), whereby the latter evolved into the Treaty on the Functioning of the European Union (TFEU).⁶² As a consequence, the European Community transformed into the European Union and was recognized, for the first time, internationally as a legal personality. Moreover, several protocols supplemented the altered TEU and the TFEU and were embedded into the Treaty of Lisbon.

With Article 194 TFEU the EU gains for the first time a legal basis that provides for implementation of a wide-ranging EU energy policy. This means that the Treaty of Lisbon grants the EU primary legislative powers in the sphere of energy, whereby the Treaty becomes the "supreme source of law" and prevails over national laws.⁶³ So, the Lisbon Treaty identifies and compulsorily determines EU energy policy, which finds its reflection in the Commission document "An Energy Policy for Europe" and the Green Papers.

The Gas Security of Supply Regulation: An important legislative act dealing with measures to safeguard the security of gas supply is Regulation (EU) No 994/2010.⁶⁴ The Regulation presents specific measures estimating the risks and defining actions to avoid gas supply interruptions as well as designing plans to handle possible interruptions.

European Energy Security Strategy: In the light of the latest Russian-Ukrainian gas crisis of 2014, the heads of state at the European Council meeting in March 2014 requested the Commission to design an energy security strategy. As a result, on May 28, the Commission published an extensive document, namely, the European Energy Security Strategy (EESS).⁶⁵ This document closely tied EU energy security with the 2030 framework comprising, for instance, climate and energy objectives as well as prospective legislation for reaching these objectives.⁶⁶

The Energy Union Package: Resting upon the European Energy Security Strategy of May 2014, the new Commission document⁶⁷ points out that diversifying energy sources bypassing Russia is a core step towards enhancing energy security in

⁶² Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12007L/TXT>. Last visited on 07.05.2015.

⁶³ Europa. *Primary Law*. Available at: http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14530_en.htm. Last visited on 04.04.2015.

⁶⁴ Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, OJ L 295, 12.11.2010, pp. 1–22. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010R0994>. Last visited on 08.04.2015. (Regulation (EU) No 994/2010)

⁶⁵ European Commission. 2014a. Communication From The Commission To The European Parliament And The Council: European Energy Security Strategy, COM(2014) 330 final, Brussels. (European Commission 2014a)

⁶⁶ *Ibid*, p. 19.

⁶⁷ European Commission. 2015b. Energy Union Package: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, Brussels, 2015, COM(2015) 80 final. (European Commission 2015b)

the EU. This means discovering new supply regions for fuels and new technologies as well as enhancing infrastructure for accessing new supply sources to optimize diversification and security of the European energy sector.⁶⁸ The Commission intends to foster its activity on the Southern Gas Corridor and:

...establish strategic energy partnerships with increasingly important producing and transit countries or regions such as Algeria and Turkey; Azerbaijan and Turkmenistan; the Middle East; Africa and other potential suppliers.⁶⁹

For this purpose, and especially with regard to gas, the Commission will elaborate a resilience and diversification package for gas that will involve a revised Security of Gas Supply regulation.⁷⁰

2.3. The role of the ECJ and its case-law in the development of energy supply security

Another central EU institution which plays an important role in the legal order of the EU is the European Court of Justice (ECJ), the case-law of which constitutes an essential component of the main sources of European law and, thereby, also that of European energy law. While the case-law in civil law states holds a relatively different position, the case-law of the European Courts is a binding and fundamental source of EU law. Within the EU containing 28 Member States, it is of great significance to apply and interpret European law uniformly. Incompatible views of the Member States' national courts regarding the correct applicability of EU law would put at risk the unity of the European legal order and disrupt the central prerequisite of legal certainty. Therefore, uniform interpretation of the law regardless of the conditions under which it is to be applied should result in effective EU law. Aside from the binding effect of the ECJ's case interpretation, the latter also serves as a guideline for upcoming cases because it is to be considered as the correct interpretation of a certain provision in any future cases before national courts or authorities. As a result, a previous ruling of the ECJ can be relied upon by a national court concerned with the interpretation of a particular provision already reflected by the ECJ.⁷¹

With regard to security of energy supply, arguments concerning this topic have been applied before the ECJ in several cases. On the basis of an analysis of these cases, the ECJ has apparently used an extremely limited interpretation of the conception and has solely accepted argumentation on security of supply in just a few cases.⁷² The objectives of security of supply have been scrutinized in the TFEU under

⁶⁸ European Commission. 2015a. *Energy Union Factsheet*, Press Release, MEMO/15/4485, Brussels. Available at: [http://europa.eu/rapid/press-release MEMO-15-4485_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4485_en.htm). Last visited on 25.04.2015. (European Commission 2015a, p. 1)

⁶⁹ European Commission 2015b, *supra* note 69, p. 6.

⁷⁰ European Commission 2015a, *supra* note 70, p. 1.

⁷¹ Talus, Kim. 2014. *Research Handbook on International Energy Law*, Cheltenham: Edward Elgar Publishing. (Talus 2014, pp. 244-246)

⁷² Talus, Kim. 2011. Vertical natural gas transportation capacity, upstream commodity contracts, and EU competition law. Alphen aan den Rijn: Kluwer Law International. (Talus 2011, p. 51)

such titles as “public security” (Articles 36, 52, 62, 65(1)(b)) or “services of general economic interest” (Article 106(2)),⁷³ i.e., regarded as of public interest and consequently giving ground to state intervention in security of energy supply issues.

The starting point for experience of elaborating security of supply-related case law was set with the infamous *Campus Oil*⁷⁴ case in 1983. Even though the case deals with security of oil supply and not that of gas, parallels can still be drawn. Taking into account the countries’ substantial dependence on energy products and the supply of these, the ECJ was of the opinion that they are of exceptional significance for the modern economy and fundamentally important for a country’s existence. Moreover, disruption of supplies of energy products “with the resultant dangers for the country’s existence, could therefore seriously affect public security.”⁷⁵ Therefore, the ECJ found that Article 36 TFEU permits Member States to protect public security through tools that restrict free movement of goods within the meaning of Article 34 TFEU.⁷⁶ This approach by the ECJ, however, became more restrictive in the course of upcoming cases and, thus, constrained the Member States’ position to relate security of energy supply to public security. A few such cases will be presented below.

In 1988, only several years after *Campus Oil*, another similar case arose before the ECJ, where the Commission initiated legal proceedings against Greece.⁷⁷ The Greek state strove to justify its particular sole rights possessed by public sector refineries on the basis of public security. Nevertheless, the ECJ decided to reject Greece’s attempt at justification on public security grounds. This happened because Greece failed to prove that, in case the state’s rights concerning the importation and marketing of petroleum products were not supported, the refineries would be incapable of selling their products on the market at competitive prices. In this way, they would not be able to guarantee their uninterrupted performance.⁷⁸

A likely outcome was concluded ten years later in the case of *Commission v Greece*.⁷⁹ The core issue here was Greek law under which importing enterprises were obliged to keep a minimum stock of petroleum as well as given the right to transfer that obligation to refineries situated in Greece. Similarly to the previous case, the ECJ was of the view that the Greek government hindered the free movement of goods and its actions were therefore not subject to justification under the security of supply argument applied in the *Campus Oil* case. Apart from Greece’s arguments being of an utterly economic nature, the ECJ found that there were less restrictive means on hand. Hence, these arguments were not justified under Article 36 TFEU.⁸⁰

⁷³ Johnston, Angus Charles and Guy Block. 2012. *EU Energy Law*. Oxford, United Kingdom: Oxford University Press. (Johnston and Block 2012, p. 241)

⁷⁴ Judgment in *Campus Oil*, C-72/83, EU:C:1984:256.

⁷⁵ *Ibid*, paragraph 34.

⁷⁶ Talus 2011, *supra* note 74, p. 52.

⁷⁷ Judgment in *Commission v Greece*, C-347/88, EU:C:1990:470.

⁷⁸ Talus, Kim. 2013. *EU Energy Law and Policy: A Critical Account*, New York: Oxford University Press. (Talus 2013, p. 164)

⁷⁹ Judgment in *Commission v Greece*, C-398/98, EU:C:2001:565.

⁸⁰ Talus 2013, *supra* note 80, p. 165.

In the *PreussenElektra* case⁸¹ the Advocate General (AG) regarded it as doubtful whether reference to public security under Article 36 TFEU remained as an option in light of the fact that the Electricity Directive already provided some necessary measures to guarantee security of supply.⁸² Moreover, the ECJ admitted restrictions on Article 36 not based on public security but on “protection of the environment”. From case-law examination it follows that energy regulations, like the Gas and Electricity Directives, are regarded as the best guarantees of security so that reference to merely national measures will not be subject to justification any longer. This, in its turn, will decrease the Member States’ power in that area.⁸³

2.4. Legal relations of the EU with the main natural gas-producing countries

Today, the EU heavily depends on three main suppliers, namely Russia (32%), Norway (31%), and Algeria (13%).⁸⁴ Trading in natural gas involves an essential political element because natural resources, especially energy, are an important foreign policy instrument for the resource-possessing states without any exception for Russia and other major energy suppliers.⁸⁵ For this reason, the next sections will present an overview of the legal and political instruments necessary for securing natural gas imports to the EU. In that light, the relationship between the EU and its most significant natural gas-supplying countries will be examined carefully. Besides, the Caspian region will also be taken into consideration.

2.4.1. Russia

Possessing over 20% of the world’s natural gas reserves makes Russia the largest natural gas producer and exporter around the globe. The EU in particular imports more than half of its energy (53% in 2013) from Russia, making the latter its most important energy supplier.⁸⁶ The EU, in turn, is Russia’s main destination in terms of energy exports. These conditions are regarded as mutual interdependence of supply, demand, investment and know-how. Both sides are interested in maintaining and boosting their relationship which should further provide security and foresee-ability both for Russia and the EU. The energy obtained by the EU from Russia essentially improves the economic state of the latter. Similarly, the ongoing flow of reasonably priced energy adds to the economic growth of the EU.⁸⁷

⁸¹ Judgment in *PreussenElektra*, C-379/98, EU:C:2001:160.

⁸² AG Jacobs, Opinion in *PreussenElektra*, C-379/98, EU:C:2000:585, paragraph 209.

⁸³ Haghghi, Sanam S. 2008. “Energy Security and the Division of Competences between the European Community and its Member States”, *European Law Journal*, Vol. 14, No. 4, pp. 461–482. (Haghghi 2008, p. 474)

⁸⁴ European Commission 2014b, *supra* note 16, p. 26.

⁸⁵ Talus 2011, *supra* note 74, p. 18.

⁸⁶ European Parliament. 2015. *EU-Russia energy relations – stuck together?* Available at: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/551343/EPRS_ATA\(2015\)55134_3_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/551343/EPRS_ATA(2015)55134_3_EN.pdf). Last visited on 02.05.2015, p. 1.

⁸⁷ European Union External Action. *EU relations with Russia*. Available at: http://eeas.europa.eu/russia/about/index_en.htm. Last visited on 02.05.2015.

In 2013, Russia brought 161.5 bcm of natural gas via Gazprom to the European market. The biggest importers were Germany with 40.15 bcm, Italy with 25.32 bcm, the UK with 12.54 bcm, and France with 8.17 bcm.⁸⁸ Countries such as Bulgaria, the Baltic States, Romania, Finland, and Slovakia rely solely on Russian gas imports.⁸⁹ These and some other European Member States (for example, Austria, Belgium, the Czech Republic, Greece, Hungary)⁹⁰ obtain natural gas from Russia through several pipelines such as Urengoy, Yamal, Blue Stream, and Nord Stream.⁹¹

Due to this heavy dependence on Russian energy sources, natural gas in particular, the EU is keen on securing its long-term energy supplies, which it has implemented through two key strategies: 1) a political one based on bilateral cooperation by means of: a) the Partnership and Cooperation Agreement, b) the EU-Russia Energy Dialogue, and c) the Common Strategy with Russia. 2) By means of international law tools: the Energy Charter Treaty.⁹² These two key strategies will be presented below.

1) Bilateral Cooperation

a) The Partnership and Cooperation Agreement:

Being accepted as the legal basis for the EU-Russian relationship, the Partnership and Cooperation Agreement (PCA)⁹³ regulates collaboration between these two parties. Signed in 1994, the agreement came into force on 1 December 1997 for an initial period of 10 years.⁹⁴ According to Article 106 of the PCA, after expiration of the 10-year-period the agreement is to be automatically renewed:

...provided that neither Party gives the other Party written notice of denunciation of the Agreement at least six months before it expires.⁹⁵

Thus, since 2007, the agreement is annually extended and continues to govern bilateral relations between the EU and Russia until substituted by a new agreement. Pursuant to Article 1 of the PCA, the aims of the agreement alternate from

⁸⁸ Gazprom Export. *Delivery statistics*. Available at: <http://www.gazpromexport.ru/en/statistics/>. Last visited on 02.05.2015.

⁸⁹ Grigas, Agnia. 2013. "Energy Policy: The Achilles Heel Of The Baltic States". In "The Baltic States in the EU: Yesterday, Today and Tomorrow" by A. Grigas, A. Kasekamp, K. Maslauskaitė, L.Zorgenfreiņa, *Studies & Reports No 98, Notre Europe – Jacques Delors Institute*. (Grigas 2013, p. 67)

⁹⁰ Talus 2011, *supra* note 74, p. 18.

⁹¹ Gazprom. *Annual Report 2013*. p. 18. Available at: <http://www.gazprom.com/f/posts/60/660385/gazprom-annual-report-2013-en.pdf>. Last visited on 02.05.2015.

⁹² Talus 2011, *supra* note 74, p. 19.

⁹³ Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, OJ L 327, 28.11.1997. (PCA)

⁹⁴ European Union External Action. *The Partnership and Cooperation Agreement*. Available at: http://eeas.europa.eu/delegations/russia/eu_russia/political_relations/legal_framework/index_en.htm Last visited on 02.05.2015.

⁹⁵ PCA, *supra* note 95, Article 106.

democracy and cultural cooperation to free trade and transformation of the Russian economy to a market-based system.⁹⁶

Even though energy is considered as a crucial component in the EU-Russia relationship, there are no extensive provisions concerning energy included in the PCA. Specific reference to energy is made in Article 65 PCA, which states in para. 1 that cooperation in this sphere:

...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.⁹⁷

As to para. 2 of Article 65, such cooperation is to involve such areas as "improvement of the quality and security of energy supply", "formulation of energy policy", "modernization of energy infrastructure including interconnection of gas supply", and "improvement of energy technologies in supply".⁹⁸

Aimed at replacing the current version, negotiations for a new agreement between the EU and Russia were initiated at the EU-Russia Summit in June 2008. However, the negotiations were not very successful and did not lead to further developments.⁹⁹ During this period, intensive discussions on Russia's accession to the World Trade Organization (WTO) took place, which resulted in Russia becoming the WTO's 156th member on 22 August 2012.¹⁰⁰

b) The EU-Russia Energy Dialogue

Being a topic of enormous significance to be handled solely by a small section of the PCA, the energy issue was on the agenda of the EU-Russia bilateral summit of October 2000. During this summit an energy dialogue was established on the basis of Article 65 of the PCA aimed at the improvement of energy relations between the EU and Russia as well as assistance with the latter's market integration.¹⁰¹ The dialogue addresses such matters as energy security, energy efficiency, infrastructure, investment, and trade.¹⁰²

Numerous achievements have been reached through the EU-Russia Energy Dialogue. One of these was creation of a common understanding on the preparation of a road map for EU-Russia energy cooperation until 2050.¹⁰³ This document points out that the Roadmap:

...should concentrate on an analysis of different scenarios and their impact on EU-Russia energy relations, look into their consequences for

⁹⁶ Talus 2013, *supra* note 80, p. 229.

⁹⁷ PCA, *supra* note 95, Article 65(1).

⁹⁸ PCA, *supra* note 95, Article 65(2).

⁹⁹ Talus 2013, *supra* note 80, p. 229.

¹⁰⁰ European Commission. 2012. *EU welcomes Russia's WTO accession after 18 years of Negotiations*, IP/12/906, Brussels. Available at: http://europa.eu/rapid/press-release_IP-12-906_en.htm?locale=en. Last visited on 25.04.2015. (European Commission 2012, p. 1)

¹⁰¹ Haghghi 2007, *supra* note 85, p. 344.

¹⁰² Talus 2013, *supra* note 80, p. 230.

¹⁰³ European Commission. 2013b. *Roadmap of the EU-Russia Energy Cooperation until 2050*. Available at: http://ec.europa.eu/energy/sites/ener/files/documents/2013_03_eu_russia_roadmap_2050_signed.pdf. Last visited on 01.05.2015. (European Commission 2013, p. 2).

the energy sectors, elaborate long-term opportunities and risks of the overall energy supply and demand situation and investigate the potential for long-term cooperation in the field of energy.¹⁰⁴

Maintaining the sovereignty of policy conclusions of the EU and its Member States on the one hand, and of Russia on the other hand, the Roadmap is future-oriented and provides measures to foster energy cooperation between the EU and Russia throughout the upcoming decades. Measures suggested by the document are to be observed and reviewed within the EU-Russia Energy Dialogue along with new tendencies in development.¹⁰⁵ Another goal has been achieved with regard to energy efficiency. Here, a €2.8 million EU-funded project was successfully accomplished in December 2007 in Arkhangelsk, Astrakhan, and Kaliningrad regions.¹⁰⁶

The most considerable outcome of the Energy Dialogue is the so-called Early Warning Mechanism, which appeared as a consequence of the EU-Russia Summit in Samara in May 2007.¹⁰⁷ The core issue of the Early Warning Mechanism is the principle of mutual transparency and information-sharing in case of possible energy supply disruptions.¹⁰⁸ In the light of existing arguments with Ukraine, the Russian government announced its intention to interrupt gas supplies to the EU via Ukraine and, thus, officially activated the Early Warning Mechanism on 18th December 2008. Even though the Mechanism had warned about the possible crisis in late December 2008, it did not offer any specific measures in the event of supply interruption, hence resulting in the EU's confrontation with difficulties during interruptions in early January 2009. In order to avoid such situations in the future, the EU and Russia concluded by updating the Early Warning Mechanism and added a number of effective measures to be taken in case of supply interruption.¹⁰⁹

It is clear that the Energy Dialogue has led to several notable outcomes.¹¹⁰ Nevertheless, just like the PCA, the Energy Dialogue has its advantages but cannot hold back the shortage of legally binding norms due to its being perceived as a "soft law" mechanism.¹¹¹

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Tarradellas, Espuny F. 2009. "EU-Russia Energy Relations: EU-Russia Energy Dialogue at the Origins of the European Foreign Energy Policy", *EU-Russia Centre Review, Issue 9, pp. 8-19.* (Tarradellas 2009, p. 18)

¹⁰⁷ Memorandum on a Mechanism for Preventing and Overcoming Emergency Situations in the Energy Sector within the Framework of the EU-Russia Energy Dialogue (Early Warning Mechanism), Brussels, 2011, p. 2. Available at: http://ec.europa.eu/energy/sites/ener/files/documents/20110224_memorandum.pdf. Last visited on 01.05.2015.

¹⁰⁸ Talus 2013, *supra* note 80, p. 230.

¹⁰⁹ European Commission. 2009. Commission Staff Working Document Accompanying Document To The Proposal for a Regulation Of The European Parliament And Of The Council Concerning Measures To Safeguard Security Of Gas Supply And Repealing Directive 2004/67/EC, Brussels, SEC(2009) 977. (European Commission 2009, pp. 3-6)

¹¹⁰ Jouravlev, Alexander. 2011. "The Effect of the European Union's Unbundling Provisions on the EU-Russian Natural Gas Relationship and Russia's Accession to the World Trade Organization". Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1969502. Last visited on 01.05.2015. (Jouravlev 2011, p. 4)

¹¹¹ Van Elsuwege, Peter. 2012. "Towards a Modernisation of EU-Russia Legal Relations?" *CEURUS EU-Russia Papers, No. 5.* (Van Elsuwege 2012, p. 6)

c) The Common Strategy with Russia

As reflected in Article 26 of the TEU, the Common Strategy with Russia is conducted within the scope of “common strategies” and is a unilateral measure accepted by the EU in 1999.¹¹² The aims of the strategy are as follows: 1) consolidation of democracy, the rule of law and public institutions in Russia; 2) integration of Russia into a common European economic and social space; 3) cooperation to strengthen stability and security in Europe and beyond; 4) common challenges on the European continent. Point 4 also underlines the EU-Russian common interest in directing their energy policies towards enhancement of “the exploitation and management of resources and security of supplies in Russia and in Europe.”¹¹³

2) The Energy Charter Treaty

The most important international instrument encouraging European energy security of supply is the Energy Charter Treaty, which is an energy-oriented multilateral investment Treaty.¹¹⁴ The first initiative towards the idea of such an international treaty was put forward at the European Council in Dublin on 25 June 1990. Prompted by the fall of the USSR and the immense procurement of energy resources in Former Soviet countries (FSUs), an East-West corridor was initiated with the purpose of securing Europe’s energy supply needs and to guarantee those countries support in capital, technology, and, if necessary, enable a rearrangement of their centrally planned economy. This treaty was targeted at creation of a political and legal basis for cooperation between the two sides as well as to invigorate political stability within Europe by fostering economic development in Eastern Europe.¹¹⁵

After a suggestion by Dutch Prime Minister Ruud Lubbers, 50 governments and the European Community signed the European Energy Charter (EEC) on 16-17 December 1991, which in December 1994 resulted in the Energy Charter Treaty (ECT).¹¹⁶ The ECT came into force on 16 April 1998 and since then “provides an important legal basis for the creation of an open international energy market”.¹¹⁷

Pursuant to Article 2 of the ECT, the Treaty’s objective is to create:

...a legal framework in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter.¹¹⁸

Today, the ECT involves 51 states. Moreover, it has more than 20 observer countries and more than ten international organizations with observer status.¹¹⁹ The Treaty

¹¹² Talus 2011, *supra* note 74, p. 22.

¹¹³ Common Strategy of the European Union of 4 June 1999 on Russia, (1999/414/CFSP), pp. 2-3. Available at: http://trade.ec.europa.eu/doclib/docs/2003/november/tradoc_114137.pdf. Last visited on 01.05.2015.

¹¹⁴ Talus 2011, *supra* note 74, p. 23.

¹¹⁵ Haghghi 2007, *supra* note 85, pp. 188-189.

¹¹⁶ *Ibid.*

¹¹⁷ Energy Charter Treaty and Related Documents. Available at: http://www.encharter.org/fileadmin/user_upload/document/EN.pdf. Last visited on 01.05.2015. (ECT and Related Documents, p. 3)

¹¹⁸ *Ibid.*, Article 2.

handles the following five comprehensive areas: 1) protection and promotion of foreign energy investments, resting upon the expansion of national treatment or most favored nation treatment (whichever is preferable); 2) freedom of energy transit via pipelines and grids; 3) mechanisms for the resolution of State-to-State or Investor-to-State disputes; 4) free trade in energy materials, products and energy-related equipment, on the basis of WTO rules; 5) decreasing the negative environmental influence of the energy cycle by optimizing energy efficiency.¹²⁰

Even though initially the ECT's aim was to create energy cooperation between the eastern and western parts of Europe, today the geographical borders of the energy markets have been extended and reach as far as the Caspian region as well as Japan and Australia. Despite this, none of the EU's major natural gas suppliers, i.e., Russia, Norway, and Algeria, have ratified the ECT. With regard to Russia, it applied the ECT provisionally until summer 2009, meaning that it applied the Treaty in so far as "such provisional application is not inconsistent with its constitution, laws or regulations" pursuant to Article 45 of the ECT. Drawing upon Talus (2011), from the list of Member States it can be seen that the consuming states demonstrate a bigger interest in adopting the ECT than the supplying states. This situation is clearly the main drawback of the ECT from the EU point of view. At the same time, from this very point of view, it is worth remarking that, being a considerable transit state for the EU, Ukraine is included in the list of Member States as well. Although from the EU point of view, it could be of great significance in the future that some of the fastest rising oil and natural gas producers should belong to the ECT community, especially Kazakhstan and the Caspian region, it is not excluded that these states might withdraw from the Treaty if their economic or political situation requires it.¹²¹

Russia's unwillingness to ratify the ECT can be explained by several reasons. From a political aspect, Russia leaned on its natural reaction to pressure to ratify the Treaty coming externally from the EU and the Commission. Besides, from a producer's point of view, Russia argued that there was an imbalance between the consuming and producing countries' positions. The most serious barrier to Russia's ratification of the ECT has become the Transit Protocol. The negotiations on this Protocol were originally initiated in 1991, whereas proper negotiation work did not start until 2000. In 2003 it finally became clear that the text of the Protocol could not be unanimously agreed.¹²² However, despite misunderstandings concerning the ratification issue, Russia has probably been underestimating the potential economic benefits that would derive from acceptance of the ECT. Among other benefits, it would secure Russian investments outside the country.

¹¹⁹ Energy Charter. *Members and Observers*. Available at: <http://www.encharter.org/index.php?id=61&L=0L%200%2041%EF%BF%BD0%EF%BF%BD> 3. Last visited on 01.05.2015.

¹²⁰ ECT and Related Documents, *supra* note 119, p. 14.

¹²¹ Talus 2011, *supra* note 74, p. 24.

¹²² Talus 2013, *supra* note 80, pp. 239-240.

2.4.2. Norway

Norway is the world's third largest and Europe's second largest exporter of natural gas. The gas trade between the EU and Norway started in the 1970s after Norway's discovery of considerable natural gas deposits in the North Sea.¹²³ Almost all of Norway's natural gas is realized on the European market. The competitiveness of Norwegian gas on the European market is owed to an optimally organized gas infrastructure including short transport routes. Norway exports its natural gas to all the main Western European consumer states and is therefore a crucial player in European energy supply. In 2013, Norwegian gas exports amounted to ca. 107 bcm out of which 103 bcm were transported through pipelines and 4 bcm as LNG from the Snøhvit facility. These exports go predominantly to Germany, Belgium, France, and the UK, where Norwegian gas reaches a level ranging from 20 to 40 per cent of total gas consumption. To date, the transport capacity of Norway's pipeline system accounts for approximately 120 bcm per year. Kårstø, Kollsnes and Nyhamna are the three onshore gas facilities that are integrated into the pipeline system and get rich gas from the fields. Dry and rich gases are separated from each other to be transported through pipelines to the receiving terminals. All in all, there are four receiving terminals for gas from Norway in continental Europe: two in Germany, one in France and one in Belgium. Moreover, there are also two receiving terminals in the UK. The total length of Norwegian gas pipelines comprises over 8000 km.¹²⁴ The main pipelines that connect Norway with the EU are: the Norpipe (links Norwegian fields with Erden in Germany); the Vesterled pipeline (brings gas to St. Fergus in Britain); the Zeepipe (connects Norway with Zeebrugge in Belgium); the Franpipe (connects Norway with Dunkirk in France); Europipe I and II (bring Norwegian gas to the German gas market); the Langeled pipeline (supplies the British market with gas from Norway).¹²⁵

Being considered "politically stable and secure", Norway, as an external energy supplier, takes its own special place.¹²⁶ Even though Norway is not a Member State of the EU (following the majority of negative responses to Norway's EU membership in the two referendums of 1972 and 1994)¹²⁷, the country possesses the right of free access to the Internal Market according to the *European Economic Area (EEA) Agreement* of 1994.¹²⁸ This Agreement is the most extensive economic agreement that Norway has signed and also the most significant agreement

¹²³ Proedrou 2011, *supra* note 28, p. 106.

¹²⁴ Ministry of Petroleum and Energy. 2014. "Gas Exports from the Norwegian Shelf". Available at: <https://www.regjeringen.no/en/topics/energy/oil-and-gas/Gas-exports-from-the-Norwegian-shelf/id766092/>. Last visited on 15.05.2015. (Ministry of Petroleum and Energy 2014).

¹²⁵ Proedrou 2011, *supra* note 28, p. 106.

¹²⁶ Talus 2013, *supra* note 80, p. 232.

¹²⁷ Hansen Bundt, Kate. 2001. "Why the Norwegians Said No". In *Euro-Skepticism: A Reader*, ed. Tiersky, Ronald, Lanham, Maryland: Rowman & Littlefield. (Hansen Bundt 2001, p. 113)

¹²⁸ European Union External Action. *Trade Relations EU-Norway*. Available at: http://eeas.europa.eu/delegations/norway/eu_norway/trade_relation/index_en.htm. Last visited on 15.05.2015.

managing EU-Norway relations.¹²⁹ By means of this Agreement, Norway adopted the EU energy market rules in its legal system¹³⁰ and, thereby became an equal partner to the EU Member States in the EU internal market enjoying its four freedoms: free movement of goods, persons, services, and capital.¹³¹ Besides, the EEA Agreement guarantees a high level of economic integration, common competition rules, rules for state aid and government procurement.¹³²

In addition to the EEA Agreement, another important instrument is the bilateral *EU-Norway Energy Dialogue*. This Dialogue was initiated in 2002 and is targeted at enhancing cooperation with Norway, covering several energy issues such as international energy matters, global energy supply and demand, policy developments in Norway and in the EU, application of EU energy rules in Norway, collaboration on technology, carbon capture and storage, and the like. The consideration of energy security issues has lately deepened the EU-Norway energy relationship to an even greater extent. Initiated in 2012, an EU-Norway Energy Conference has taken place since then annually to discuss energy cooperation matters.¹³³

2.4.3. Algeria

Being the EU's third main energy supplier, Algeria exports its natural gas mainly to Italy, the UK, France, and Spain.¹³⁴ In 2012, the EU imported 43 932 bcm of natural gas from Algeria.¹³⁵ Having a very well-developed export infrastructure, Algeria delivers its gas to the EU through such natural gas pipelines as the Transmed (bringing Algerian gas to Sicily via Tunisia), Maghreb Europe (connecting Algeria with Spain through Morocco), and Medgaz (linking Algeria with Spain directly without crossing Morocco).¹³⁶ Moreover, another pipeline, namely Galsi, is being projected. The new pipeline will connect Algeria with Italy, enabling delivery of Algerian gas. The Galsi pipeline's capacity will reach 8 bcm per year and is to be brought into operation in 2018.¹³⁷

Algeria takes part in two significant types of cooperation: the European Neighbourhood Policy and the Euro-Mediterranean partnership programme. Created in 2004, the European Neighbourhood Policy (ENP) aims to avoid the emergence of new dividing lines between the enlarged EU and its neighbors and, to the contrary,

¹²⁹ Norway Mission to the EU. *Norway and the European Union*. Available at: http://www.eu-norway.org/eu/norway_and_the_eu/#.VUD8uiHtmkp. Last visited on 15.05.2015.

¹³⁰ European Commission. *Norway*. Available at: <http://ec.europa.eu/energy/en/norway>. Last visited on 15.05.2015.

¹³¹ European Union External Action. *Trade Relations EU-Norway*, *supra* note 130.

¹³² European Commission. *Countries and Regions: Norway*. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/norway/>. Last visited on 15.05.2015.

¹³³ European Commission, *Norway*, *supra* note 132.

¹³⁴ Lanthemann, Marc. 2013. "In Europe, the Strategic Importance of Algerian Natural Gas". Available at: <http://www.naturalgaseurope.com/strategic-importance-of-algerian-natural-gas-for-europe>. Last visited on 15.05.2015. (Lanthemann 2013)

¹³⁵ European Commission 2014b, *supra* note 16, p. 65.

¹³⁶ Proedrou 2011, *supra* note 28, p. 109.

¹³⁷ Edison. 2014. *GALSI pipeline*. Available at: <http://www.edison.it/en/galsi-pipeline>. Last visited on 15.05.2015.

strengthen the security, well-being, and stability of all the states concerned. The ENP structure involves the 16 closest neighbors of the EU, namely: Algeria, Azerbaijan, Ukraine, Georgia, Morocco, Egypt, Israel, Moldova, Jordan, Libya, Palestine, Belarus, Tunisia, Syria, Lebanon, and Armenia. Pursuing a mainly bilateral policy between the EU and each partner state, the ENP is supplemented by regional and multilateral cooperation initiatives – the Eastern Partnership, the Black Sea Synergy, and the Euro-Mediterranean Partnership EUROMED (initially the Barcelona Process, re-established in Paris in July 2008).¹³⁸ The latter promotes economic integration and democratic reform within 16 EU neighboring countries in North Africa and the Middle East. Resting upon the agreements of the Barcelona Declaration, EUROMED was further expanded into the Union for the Mediterranean (UfM) striving to reach its objective of establishing a Mediterranean region of peace, security and shared prosperity.¹³⁹ One of the primary spheres of interest in this cooperation is the energy sector. Within the scope of common preferences lie especially such matters as renewable energy sources, energy efficiency as well as development of a strategic partnership.¹⁴⁰

The relationship between Algeria and the EU was deepened by signing the Association Agreement¹⁴¹ in 2002. In force since 2005, the Association Agreement forms the legal basis of EU-Algeria relations. The bilateral agreement replaces the 1976 Cooperation Agreements and has been concluded for an indefinite length of time. The Association Agreement is aimed at strengthening the existing relationship between the two sides, which is based on reciprocity and partnership.¹⁴² Among other issues, the Agreement sets such goals as creating a regular political dialogue, enhancing commercial bonds, and enlarging cooperation on a number of matters ranging from domestic affairs to social cooperation. With the purpose of further developing the provisions of the Agreement, an Association Council together with several thematic sub-committees and informal dialogues, consisting of representatives from the EU and Algeria, hold meetings on a regular basis.¹⁴³ Energy, in particular, is dealt with in Article 61 of the Agreement, which states that the objectives of cooperation in the energy sector comprise: (a) institutional, legislative, and regulatory upgrading to ensure that activities are regulated and investment promoted; (b) technical and technological upgrading to prepare energy enterprises for the requirements of the market economy and competition; (c) development of partnerships between European and Algerian enterprises as regards the activities of

¹³⁸ European Union External Action. *What is the European Neighbourhood Policy?* Available at: http://eeas.europa.eu/enp/about-us/index_en.htm. Last visited on 15.05.2015.

¹³⁹ European Union External Action. *The Barcelona Process*. Available at: http://eeas.europa.eu/euromed/barcelona_en.htm. Last visited on 15.05.2015.

¹⁴⁰ Talus 2011, *supra* note 74, p. 26.

¹⁴¹ Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, OJ L 265, 10.10.2005. (Euro-Mediterranean Agreement)

¹⁴² European Union External Action. *The EU-Algeria Association Agreement*. Available at: http://eeas.europa.eu/algeria/agreement/index_en.htm. Last visited on 15.05.2015.

¹⁴³ European Union External Action. *EU relations with Algeria*. Available at: http://eeas.europa.eu/algeria/index_en.htm. Last visited on 15.05.2015.

exploration, production, processing, distribution, and services in the energy sectors.¹⁴⁴

2.4.4. Caspian Region: energy relations with Azerbaijan

The EU's relationship with the countries of the Caspian region is considered to be of utmost importance. This is explained by the respective countries' potential to contribute greatly towards EU diversification of energy imports and import routes. Due to the Commission's proposals in its energy policy papers of recent years, European leaders have aimed their efforts at forming ties with these countries. The Caspian Sea in Central Asia borders Azerbaijan, Turkmenistan, Kazakhstan, Russia, and Iran. Following the collapse of the Soviet Union, the Caspian region started gaining increasing international interest owing to its potential in oil and gas deposits positioned in at least six discovered hydrocarbon fields beneath the Caspian Sea. The idle reserves in four of these countries could provide the EU with the possibility to decrease its dependence on energy from Russia.¹⁴⁵

Resulting from the EU's border expansion, the Caspian region is becoming a closer neighbor to European countries. The region possesses different overland transit opportunities that help avoid time- and cost-consuming delivery methods necessary to transport energy resources from more faraway areas. Since the demand for Caspian energy resources shows a growing tendency, technology and investment from the West will be required for producers of the Caspian Basin to raise productivity, discover new fields and construct long pipelines to the necessary markets. Economic improvement and dependence on each other greatly increase the significance of future cooperation between the EU and Caspian states, relating to both economic possibilities and security. On top of that, Caspian energy resources form a profound revenue source for Russia and a diversification strategy for China. Because of the decrease of hydrocarbon resources around the globe, the mostly idle deposits of the Caspian will later represent a core subject of tough competition. The scope of this competition will comprise the extensive economic and strategic consequences of securing access to those resources.¹⁴⁶ As Chapter 3 of this paper deals with the Azerbaijani Shah Deniz gas field and related pipeline projects, a more detailed analysis of energy relations between Azerbaijan and the EU will be provided below.

EU-Azerbaijan energy relations

Azerbaijan has been one of the main energy actors in the Caspian region. After the exploration of oil in the late 19th century in Azerbaijan, Baku became a crucial economic pivot of the Russian Empire and its successor, the Soviet Union. In 1828,

¹⁴⁴ Euro-Mediterranean Agreement, *supra* note 143, Article 61.

¹⁴⁵ Belkin, Paul. 2008. "The European Union's Energy Security Challenges", *Congressional Research Service Report*. Available at: <https://www.fas.org/sgp/crs/row/RL33636.pdf>. Last visited on 25.04.2015. (Belkin 2008, p. 14)

¹⁴⁶ Luft, Gal and Anne Korin. 2009. *Energy Security Challenges For The 21st Century: A Reference Handbook*, Santa Barbara, California: Praeger Security International. (Luft and Korin 2009, p. 110)

the territory of Azerbaijan was divided between the Persian and Russian empires by the Treaty of Turkmenchay. Some 20 years later, the first industrial oil well in the world was detected south of Baku. With the fall of the Soviet Union, Azerbaijan launched its sovereign energy policy, thereby diminishing Russia's control over its oil and gas exports.¹⁴⁷ On 20 September 1994, Azerbaijan and a consortium of 11 oil enterprises from six various states signed a key production sharing agreement (PSA), which is known as the *contract of the century*. The signing parties agreed upon joint development of hydrocarbon reserves from three major offshore fields in the Azerbaijani part of the Caspian – Azeri, Chirag and the deepwater portion of the Guneshli field (ACG). Owning 5 billion barrels of oil reserves, the ACG field possesses more than 70% of total petroleum reserves in Azerbaijan.¹⁴⁸

Due to the widely available hydrocarbon reserves possessed by Azerbaijan and the country's perspective of becoming a crucial transit state for energy resources from Central Asia to the EU, the latter is keen on tightening its relations with Azerbaijan on levels of steady economic integration and closer political collaboration. Moreover, Baku has also expressed great interest in building a strategic partnership with European countries, viewing them as potentially the most profitable markets after Russia and the CIS states. The EU-Azerbaijan relationship started in the 1990's with the EU lending its helping hand to the Commonwealth of Independent States (CIS) countries (*TACIS programme*).¹⁴⁹ Beginning from 1999, a *PCA*¹⁵⁰ has been in place providing the legal basis for relations between the EU and Azerbaijan covering issues on trade, investment, political dialogue, and economic, legislative, and cultural cooperation. Later, intending to deepen its partnership with Azerbaijan beyond the PCA, the EU included the South Caucasus states in the European *Neighbourhood Policy* in 2004. ENP Action Plans along with strategic papers developed for the respective countries underline, among other important matters, the EU's interest in the energy sector in this region.¹⁵¹

Striving to transmit its *acquis communautaire* on a bilateral level to non-Member States, the EU considers Azerbaijan's energy Europeanization of utmost significance. The most long-lasting current bilateral tools of the EU are INOGATE (already mentioned in section 2.1.) and the "*Baku Initiative*", which are primarily aimed at converging the energy markets based on EU principles by means of bilateral and cross-border technical support.¹⁵² The "*Baku Initiative*" was launched in

¹⁴⁷ *Ibid*, p. 115.

¹⁴⁸ Guliyev, Farid. 2014. „The 'Contract of the Century' 20 years after: A mixed blessing". Available at: <http://ssrn.com/abstract=2498276>. Last visited on 23.05.2015. (Guliyev 2014, p.1)

¹⁴⁹ European Union External Action. *Political & Economic Relations*. Available at: http://eeas.europa.eu/delegations/azerbaijan/eu_azerbaijan/political_relations/index_en.htm. Last visited on 15.05.2015.

¹⁵⁰ Partnership and Cooperation Agreement Between the European Communities and their Member States, of the One Part, and the Republic of Azerbaijan, of the Other Part. Available at: http://eeas.europa.eu/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf. Last visited on 15.05.2015.

¹⁵¹ European Union External Action. *EU Relations with Azerbaijan*. Available at: http://eeas.europa.eu/azerbaijan/index_en.htm. Last visited on 15.05.2015.

¹⁵² Abbasov, Faig G. 2014. "EU's external Energy Governance: A Multidimensional Analysis of the Southern Gas Corridor". *Energy Policy*, Vol. 65, pp. 27-36. (Abbasov 2014, p. 32)

Baku on 13 November 2004 with the participation of the European Commission and the Black Sea and the Caspian Littoral States and their neighbors, namely Azerbaijan, Turkey, Uzbekistan, Georgia, Bulgaria, Kazakhstan, Romania, Kyrgyzstan, Moldova, Ukraine, the Russian Federation (observer), Tajikistan, Iran (observer), and Armenia. This process is targeted at ensuring the gradual development of regional energy markets in the Caspian Littoral States and their neighboring countries.¹⁵³ Cooperation between the EU and the participating states is supported by several working groups, which consolidate their efforts on a range of certain matters. These particular working groups are, in turn, supported by the INOGATE Technical Secretariat serving as a coordination mechanism for the energy collaboration of the Baku Initiative.¹⁵⁴

An important step towards boosting the EU's energy cooperation with Azerbaijan to an even greater level and, at the same time, supporting the latter in reforming and modernizing its domestic energy sector was the signing of a Memorandum of Understanding¹⁵⁵ between President Barroso and President Aliyev in the field of energy in November 2006.¹⁵⁶ The Memorandum defined four key areas of partnership as to the harmonization of legislation, enhancement of security of supply and transit systems, development of renewable energy sources, and increased energy efficiency and technical cooperation.¹⁵⁷ Pursuant to the Memorandum, incremental convergence with the European energy market and eventually integration is a shared priority for both sides.¹⁵⁸

Launched on 5 December 2008, *the Twinning Project* is also considered amongst the most effective bilateral projects with Azerbaijan. It is targeted at the "approximation of the Azerbaijani Energy Electricity and Gas Legislation with the so-called Acquis Communautaire of the EU".¹⁵⁹ These comprise the EU electricity and gas directives and the Commission decision (later regulation) on creating a European Regulators Group for Electricity and Gas, which is of strategic importance for Brussels because it will not only liberalize the producing country's market but also guarantee the application of upcoming modifications in due course.¹⁶⁰ The launch of the so-

¹⁵³ European Commission. *Baku Initiative*. Available at: http://ec.europa.eu/dgs/energy_transport/international/regional/caspian/energy_en.htm. Last visited on 15.05.2015.

¹⁵⁴ Talus 2011, *supra* note 74, p. 29.

¹⁵⁵ Memorandum of Understanding on a Strategic Partnership Between the European Union and the Republic of Azerbaijan in the Field of Energy. Available at: http://ec.europa.eu/dgs/energy_transport/international/regional/caucasus_central_asia/memorandum/doc/mou_azerbaijan_en.pdf. Last visited on 15.05.2015.

¹⁵⁶ European Union External Action. *EU Relations with Azerbaijan*, *supra* note 153.

¹⁵⁷ Delegation of the European Union. 2013. *EU and Azerbaijan enhance the Memorandum of Understanding on Energy*, Press Release. Available at: http://eeas.europa.eu/delegations/azerbaijan/documents/2013_02_18_eu_and_azerbaijan_enhance_the_memorandum_of_understanding_on_energy.pdf. Last visited on 17.05.2015.

¹⁵⁸ Nasirov, Elshad. 2010. "Azerbaijan Oil and Gas Industry – Achievements and Perspectives", *Azerbaijan Focus: Journal of International Affairs*, Vol. 2 Issue 2, pp. 75-84. (Nasirov 2010, p. 76)

¹⁵⁹ Sandtner, Walter. 2009. *Twinning Project: Legal Approximation and Structural Reform in the Energy Sector of Azerbaijan*, Ministry of Industry and Energy. Available at: <https://www.energy-community.org/pls/portal/docs/354180.PDF>. Last visited on 17.05.2015. (Sandtner 2009, p. 5)

¹⁶⁰ Abbasov 2014, *supra* note 154, p. 32.

called *Black Sea Synergy* initiative was another attempt by the EU to bring together and enhance cooperation between the states surrounding the Black Sea in different areas including the energy sector.¹⁶¹

Initiated in May 2009, the Eastern Partnership of the EU is targeted towards establishing closer cooperation between the EU and its eastern European partners, namely, Azerbaijan, Georgia, Ukraine, Moldova, Belarus, and Armenia.¹⁶² The main spheres of partnership include enhancement of democracy, economic integration, and increasing energy security in these countries.¹⁶³ With respect to energy security, the Eastern Partnership intends to strengthen it:

...through cooperation with regard to long-term stable and secure energy supply and transit, including through better regulation, energy efficiency and more use of renewable energy sources. Provisions on energy interdependence could be included in the new Association Agreements or other bilateral arrangements between the EU and the partner countries. Energy cooperation should take into account the EU's Second Strategic Energy Review and each partner country's energy policy.¹⁶⁴

The Caspian region's (and, especially, Azerbaijan's) most notable project is by far the Baku-Tbilisi-Ceyhan (BTC) pipeline. Put into operation in June 2006, the pipeline transports oil from the ACG field in Azerbaijan to Georgia and Turkey, thereby linking the Caspian Sea with the Mediterranean. The BTC pipeline transports over 1 million barrels of oil a day.¹⁶⁵ Parallel to the BTC pipeline, a 691 km South Caucasus Pipeline (SCP) was constructed to bring Shah Deniz gas from Azerbaijan to Georgia and Turkey. The SCP has become operational since late 2006 first delivering gas to Azerbaijan and Georgia and, since July 2007 it also transports gas to Turkey from Shah Deniz Stage 1.¹⁶⁶ Apart from these two already activated pipeline projects, additional pipeline projects are being developed to carry gas from the Shah Deniz field to European countries, thus extending Shah Deniz Stage 1 to Stage 2, which will be described in Chapter 3.

2.5. Concluding remarks

The EU and the Commission, in particular, are concerned about the future state of European energy supply and its security and, thus, have made efforts towards

¹⁶¹ European Union External Action. *Black Sea Synergy*. Available at: http://eeas.europa.eu/delegations/azerbaijan/eu_azerbaijan/political_relations/black_sea_synergy/index_en.htm. Last visited on 17.05.2015.

¹⁶² European Union External Action. *EU Relations with Eastern Partnership*. Available at: http://eeas.europa.eu/eastern/index_en.htm. Last visited on 17.05.2015.

¹⁶³ Council of the European Union. 2009b. *Joint Declaration of the Prague Eastern Partnership Summit*, Press Release, 8435/09 (Presse 78), Brussels. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf. Last visited on 17.05.2015. (Council of the European Union 2009b, p. 9)

¹⁶⁴ *Ibid*, p. 8.

¹⁶⁵ British Petroleum. *Baku-Tbilisi-Ceyhan pipeline*. Available at: http://www.bp.com/en_az/caspian/operationsprojects/pipelines/BTC.html. Last visited on 17.05.2015.

¹⁶⁶ British Petroleum. *South Caucasus pipeline*. Available at: http://www.bp.com/en_az/caspian/operationsprojects/pipelines/SCP.html. Last visited on 17.05.2015.

stabilization in this area. Along with the Commission issuing extremely significant policy papers, another EU institution, the ECJ, has been continuously involved in this matter, ruling in various relevant cases. Moreover, with the inclusion of an energy-related Article in the Lisbon Treaty, the EU has obtained primary legislative authority in the field. Through its range of directives and regulations the EU aims to guarantee an uninterrupted gas supply for its population. Pursuing this goal, the EU has attempted to strengthen legal and political relations with its main existing gas importers, such as Russia, as well as future potential suppliers through various measures, with limited success. In fact, one of the main instruments for creating a Eurasian energy partnership, the ECT, does not currently involve Russia, the main gas-exporter to the EU.

Taking into account all of these steps taken, it is clear that the EU is resolute in its intentions to avoid extraordinary precedents that have taken place in the past, such as gas supply disruption, which led to undesired results. For this purpose it is necessary to adjust the work of all competent EU institutions to seek a common goal. This, in turn, implies enhancing the infrastructure network and, if necessary, finding radically new solutions.

3. Shah Deniz Stage 2 as the initial generator of the Southern Gas Corridor

Shah Deniz Stage 2, or Full Field Development (FFD), is a giant project that will help strengthen the EU's energy security by delivering Caspian gas to European markets for the first time. This project can be positioned as the initial generator opening the Southern Gas Corridor.

The **Southern Gas Corridor (SGC)** is a route transporting natural gas through a pipeline network linking Caspian and Middle Eastern reserves to Europe. So, it is considered as a possibility to gain access to further gas resources, which is especially important taking into account the forecast decline in gas production in the North Sea and in EU internal output. At the same time, the EU has high expectations of the SGC because of the opportunity to decrease its dependence on Russian gas.¹⁶⁷ Positioning the SGC as a "multi-source 'superhighway'", Koranyi (2014) underlines its strategic significance in bringing gas to countries enormously depending on gas imports.¹⁶⁸ With its consistent investing in the exploration of Shah Deniz Stage 2, Azerbaijan came forward as the primary option among other suppliers of the Corridor. Kardaş (2014) evolves his point of view further stating that "the development of Shah Deniz II became by definition the *enabler* of the Southern Corridor projects".¹⁶⁹ The SGC, becoming the fourth crucial gas corridor just after the Russian, North African and Norwegian ones, will have the perspective to expand and, thus, deliver 20% of European gas needs in the long-term¹⁷⁰ as further gas becomes available in Azerbaijan, and as Turkmenistan's gas finds a way to enter European markets. Moreover, the SGC is expected to be capable of transporting gas from the Eastern Mediterranean, Iraq, and maybe even the world's second largest gas resources-owner, Iran.¹⁷¹

Obviously, the SGC cannot serve as an entire replacement for Russian gas due to the fact that the initial 10 bcm it will transport to the EU makes up approximately just 2% of the EU's natural gas consumption. Eurogas President Jean-Francois Cirelli pointed out the impossibility of full substitution of Russian gas supply to the EU by other sources such as the SGC.¹⁷² Nevertheless, the strategic significance of the SGC implies not its ability to completely replace Russian gas supplies, but instead its enabling a diversification of sources and routes of supply. The Eurogas President clarifies that in spite of the SGC not being considered as an

¹⁶⁷ Erdogdu, Erkan. 2014. "Turkey's Energy Strategy and its Role in the EU's Southern Gas Corridor", *Istituto Affari Internazionali Working Papers 14 / 01*. (Erdogdu 2014, p. 2)

¹⁶⁸ Koranyi, David. 2014. "The Southern Gas Corridor: Europe's Lifeline?", *Istituto Affari Internazionali Working Papers 14/07*. (Koranyi 2014, p. 3)

¹⁶⁹ Kardaş, Şaban. 2014. "The Turkey-Azerbaijan Energy Partnership in the Context of the Southern Corridor", *Istituto Affari Internazionali Working Papers 14/04*. (Kardaş 2014, p. 6)

¹⁷⁰ European Commission. 2013a. *Gas from Azerbaijan: Commission welcomes final investment decision to extract gas pledged for Europe*, IP/13/623, Brussels. Available at: http://europa.eu/rapid/press-release_IP-13-1271_en.htm. Last visited on 25.04.2015.

¹⁷¹ Koranyi 2014, *supra* note 170, p. 3.

¹⁷² Sputnik. 2014. *Europe Plans No Extension to Southern Gas Corridor*. Available at: <http://sputniknews.com/world/20140514/189824573.html>. Last visited on 23.05.2015.

alternative, "it is important for Europe to try many different sources of gas".¹⁷³ Kalandadze (2014) expands this statement by asserting that "[o]pening up a fourth major gas corridor is less about substitution, and more about establishing competitiveness."¹⁷⁴ Another important point about the SGC is the opportunity to build an adequate infrastructure enabling a supply for Europe with gas skipping Gazprom's control. So, by introducing new supply sources, the SGC would foster competition on European markets and, hence, benefit consumers.¹⁷⁵

Being one of the world's largest gas condensate fields (with more than 1 trillion cubic meters of gas in place)¹⁷⁶, **Shah Deniz**, meaning "King of the Sea", is located 70 km offshore in the Azerbaijani section of the Caspian Sea.¹⁷⁷ Since its discovery in 1999 and its coming on stream in 2006, the Shah Deniz field has turned into the most significant source of natural gas in terms of export and internal consumption enabling Azerbaijan to become a major natural gas exporter. Developed by British Petroleum (BP), Shah Deniz contributed to the country's gaining complete energy independence.¹⁷⁸ Shah Deniz is operated by BP on the part of its partners in the Shah Deniz PSA and is established as an unincorporated Joint Venture (JV) partnership.¹⁷⁹ All in all, the Shah Deniz co-venturers involve BP (28.8%), Turkish Petroleum Corporation TPAO (19%), State Oil Company of Azerbaijan Republic SOCAR (16.7%), Malaysian oil and gas company Petronas (15.5%), Russian oil company Lukoil (10%), and National Iranian Oil Company NICO (10%).¹⁸⁰

Developed in phases, the first phase of the Shah Deniz project – Shah Deniz Stage 1 – has been employed since the operation of the SCP (also known as Baku-Tbilisi-Erzurum (BTE) pipeline). As of today, 8 billion dollars have been invested by BP along with the Shah Deniz partners in Shah Deniz Stage 1, which has the capacity to produce 9 bcm of gas annually.¹⁸¹

The second phase, Shah Deniz Stage 2, will concentrate on the rest of the resource potential, adding 16 bcm annually.¹⁸² The total costs of the project are

¹⁷³ *Ibid.*

¹⁷⁴ Kalandadze, Nino. 2014. "The Southern Gas Corridor – Window of Opportunity or Challenge for the West?", *Caspian Report, Issue 08*. (Kalandadze 2014, p. 63)

¹⁷⁵ Koranyi 2014, *supra* 170, pp. 3-4.

¹⁷⁶ British Petroleum. *Shah Deniz Stage 1*. Available at: http://www.bp.com/en_az/caspian/operationsprojects/Shahdeniz/SDstage1.html. Last visited on 23.05.2015.

¹⁷⁷ British Petroleum. *Shah Deniz 2 and the Opening of the Southern Corridor*, p.4. Available at: http://www.bp.com/content/dam/bp/pdf/Press/shah_deniz_2_brochure_english.pdf. Last visited on 23.05.2015.

¹⁷⁸ Barrett, Tristram. 2014. "Notes on the moral economy of gas in present-day Azerbaijan", *Central Asian Survey, Volume 33, Issue 4*, pp. 517-530. (Barrett 2014, pp. 519-520)

¹⁷⁹ British Petroleum. *Shah Deniz Stage 1*, *supra* note 178.

¹⁸⁰ British Petroleum. *Shah Deniz*. Available at: http://www.bp.com/en_az/caspian/operationsprojects/Shahdeniz.html. Last visited on 23.05.2015.

¹⁸¹ British Petroleum. *Shah Deniz Stage 1*, *supra* note 178.

¹⁸² British Petroleum. *Shah Deniz 2 and the Opening of the Southern Corridor*, *supra* note 179, p. 5.

estimated at 28 billion dollars.¹⁸³ The Shah Deniz Stage 2 project, consisting of three pipeline projects that will be analyzed below in this chapter, is supposed to become one of the largest and most integrated undertakings throughout global energy history. Below the author will take these projects under scrutinized analysis in an attempt to prove their relevance and timeliness.

3.1. Overview of the project

During recent years, it has been a matter of interest and intense debate what route will be chosen for transporting Shah Deniz Stage 2 gas along the SGC. The long-awaited conclusion has been delayed because the enterprises exploring the Shah Deniz gas field in the Azerbaijani part of the Caspian Sea have recalculated their investment plans. Finally, the process resulted in the optimization of some current infrastructure as well as evolution of some new pipelines: 1) the current SCP will be extended with a new parallel pipeline through Azerbaijan and Georgia; 2) the Trans-Anatolian Pipeline will carry gas from Shah Deniz through Turkey; 3) the Trans-Adriatic Pipeline will transport the gas across Greece and Albania into Italy. The figure below provides a graphic representation of the entire route.

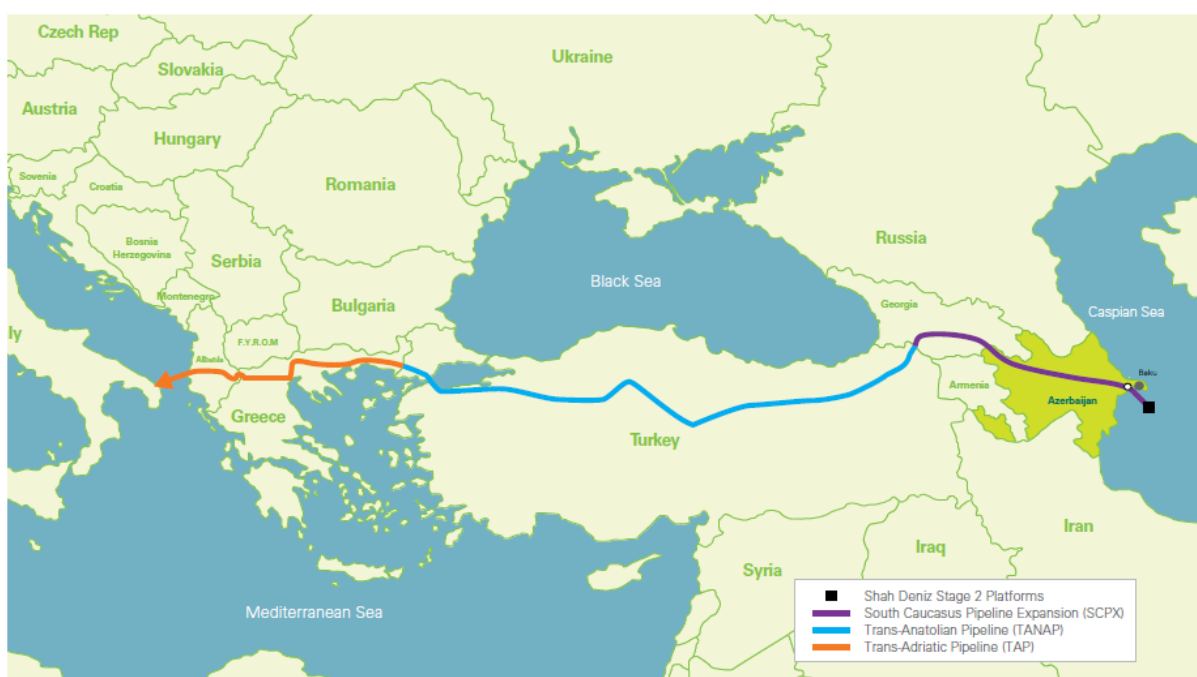


Figure 2. The SGC route. Source: British Petroleum.¹⁸⁴

Covering 3500 km, Shah Deniz Stage 2 gas will travel from the Caspian Sea to the EU via these three pipelines, forming the first components of the SGC and

¹⁸³ Shaban Ilham. 2015. Details of Azerbaijan's Gas Production in 2015. Available at: <http://www.naturalgaseurope.com/details-of-azerbaijans-gas-production-in-2015-23713>. Last visited on 27.05.2015.

¹⁸⁴ British Petroleum. Shah Deniz 2 and the Opening of the Southern Corridor, *supra* note 179, p. 3.

involving a number of governments and companies.¹⁸⁵ At the moment, the Shah Deniz Stage 2 concept comprises: two new bridge-linked offshore platforms; 26 gas production wells that will be drilled with 2 semi-submersible rigs; 500 km of subsea pipelines that will connect the wells with the onshore terminal; optimization of offshore construction vessels; extension of the Sangachal terminal to accommodate new gas processing and compression facilities.¹⁸⁶

3.2. South Caucasus Pipeline Expansion (SCPX)

The expansion of the SCP presents the starting point of the SGC. This expansion includes the construction of a new pipeline through Azerbaijan and the building of two new compressor stations in Georgia, which will enable a threefold increase of natural gas volumes transported via the pipeline to more than 20 bcm annually.¹⁸⁷ At the Georgia-Turkey border, the pipeline will connect with the next pipelines delivering gas to Turkey and the EU.

Coinciding in dates with Shah Deniz Stage 2, a Final Investment Decision on the SCPX project was made on 17 December 2013 as well. The SCPX project contracts were predominantly granted in the course of 2014. Started in 2014, pipe sections were to be shipped during 2015 and into the beginning of 2016. Overall, more than 40 000 pipe sections are to be shipped in 19 deliveries.¹⁸⁸

The shareholders in the SCP Co. are: BP (28.8%), TPAO (19%), Norway's leading oil and gas company Statoil (15.5%), Lukoil (10%), NICO (10%), Azerbaijan South Caucasus Pipeline Ltd. AzSCP (10%), and SGC Midstream (6.7%).¹⁸⁹

3.3. Trans-Anatolian Pipeline (TANAP)

Next to the SCPX, TANAP will further transport Shah Deniz Stage 2 gas across the territory of Turkey. The TANAP project is intended to provide security of natural gas to European markets and meet Turkey's increasing demand for natural gas, at the same time contributing to the socio-economic progress of the country. While delivering natural gas from the Shah Deniz field through Turkey to the EU, TANAP is believed to achieve several goals: compliance with all national laws and regulations; international standards to be applied; the best method of project implementation within the natural gas industry; and the project's total compliance with the requirements of national health, safety, and environmental regulations.¹⁹⁰

The TANAP project was launched on 24 November 2011 with the signing of a Memorandum of Understanding between Turkey and Azerbaijan. Subsequently, the design, construction, and further operation of the project were authorized. On 26

¹⁸⁵ British Petroleum. *Shah Deniz Stage 2*. Available at: http://www.bp.com/en_az/caspian/operationsprojects/Shahdeniz/SDstage2.html. Last visited on 23.05.2015.

¹⁸⁶ *Ibid.*

¹⁸⁷ British Petroleum. *South Caucasus pipeline*, *supra* note 168.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ TANAP. *About TANAP*. Available at: <http://www.tanap.com/corporate/about-us/>. Last visited on 23.05.2015.

June 2012, both the project's legal basis, namely the Host Government Agreement (later amended in May 2014), as well as the Intergovernmental Agreement concerning the Trans-Anatolian Natural Gas Pipeline System between Turkey and Azerbaijan, were signed in Istanbul.¹⁹¹

Laying the pipeline's first segment on 17 March 2015 at a ceremony held in the Selim district of Kars, the Presidents of Turkey, Azerbaijan, and Georgia marked the TANAP project's official launch of construction. In his speech, Azerbaijani President Ilham Aliyev stressed the project's tremendous prestige despite its being formed within a short period of time. Aliyev further mentioned:

Most of Azerbaijani gas will go to Europe and our neighboring countries. This is a project that will create a new partnership in Eurasia. This has already created an alliance in Eurasia. Our collaboration and partnership with these countries of different histories and cultures show our good faith. The new gas basin is now the Azerbaijani gas field of Shah Deniz.¹⁹²

3.3.1. Infrastructure

Running from the Turkish-Georgian border and carrying 16 bcm from the SCPX, TANAP will begin its route in the Turkish village of Türkgözü (in the Posof district of Ardahan) and head further through 20 cities of Turkey offloading 6 bcm of gas until it reaches the Greek border in the Ipsala district of Edirne. From there on, TANAP will connect to the Trans-Adriatic Pipeline that will further transport the remaining 10 bcm of Shah Deniz Stage 2 gas to the EU. There will be two off-take stations situated on Turkish territory for domestic natural gas transfer, one in Eskişehir and another one in Thrace. The total length of TANAP will reach 1850 km, of which 19 km will run under the Sea of Marmara, making it Turkey's longest natural gas pipeline so far.¹⁹³ The TANAP project is planned to be accomplished in 2018. The initial capacity of 16 bcm per year is aimed to be steadily increased first to 24 bcm and then to 31 bcm.¹⁹⁴ What is more, an extension of TANAP's capacity is not to be excluded. In the upcoming years, additional natural gas volumes from Turkmenistan, Iran or Northern Iraq could be carried through the same grid with TANAP's expanded capacity by further compressor stations.¹⁹⁵

3.3.2. Shareholders

On 13 March 2015, BP, SOCAR, and the Turkish Petroleum Pipeline Corporation BOTAŞ signed a shareholder agreement on the TANAP project. Pursuant to this

¹⁹¹ *Ibid.*

¹⁹² TANAP. *Groundbreaking at the "Silk Road of Energy"*. Available at: <http://www.tanap.com/media/press-releases/groundbreaking-at-the-silk-road-of-energy/>. Last visited on 23.05.2015.

¹⁹³ TANAP. *Why TANAP?* Available at: <http://www.tanap.com/tanap-project/why-tanap/>. Last visited on 23.05.2015.

¹⁹⁴ Azertag. 2015. *Ahmet Davutoglu: "TANAP" is important both for Turkey and Europe*. Available at: http://azertag.az/en/xeber/Ahmet_DavutogluTANAP_is_important_both_for_Turkey_and_Europe-850157. Last visited on 23.05.2015.

¹⁹⁵ Kardaş 2014, *supra* note 171, p. 8.

agreement, BP became one of TANAP's shareholders, acquiring a 12% share. Hence, at present, the shareholders of TANAP are the following: SOCAR (58%), BOTAS (30%), and BP (12%).¹⁹⁶ The agreement was signed in the capital of Turkey, Ankara, with the participation of Turkey's Energy and Natural Resources Minister, Taner Yıldız, SOCAR's President Rovnag Abdullayev, BOTAS Deputy General Manager Mehmet Konuk, TANAP General Manager Saltuk Duzyov, and BP Azerbaijan President Gordon Birrell.¹⁹⁷ In early May 2015, SOCAR President Rovnag Abdullayev mentioned that the sale of a stake might be possible as Iran had expressed an interest in investing in the TANAP project. So, according to Abdullayev, the shareholders of TANAP could expect profitable offers from Iran.¹⁹⁸

The TANAP project will cost around 10-11 billion dollars.¹⁹⁹ The main driving force behind the conclusion to invest in TANAP underlines that both Azerbaijan and Turkey view investment in energy infrastructure as a means of fostering their geostrategic and commercial objectives. This becomes even more important due to SOCAR's possessing commercial assets in Turkey, the intention of the Turkish state to maintain its strategic partnership with the EU, and Turkey's own increasing demand for energy.²⁰⁰

3.4. Trans-Adriatic Pipeline (TAP)

The European section of the SGC will be covered by the TAP, which was selected on 28 June 2013 by the Shah Deniz Consortium after long-lasting debates on shipping Shah Deniz Stage 2 gas to the EU.²⁰¹ With the aim of further contributing to securing the EU's future energy supplies, the pipeline running through Greece and Albania into Italy was chosen as an advantageous option as opposed to its rival, the Nabucco West pipeline project. A closer analysis of both projects will be provided in section 3.5 of this chapter.

TAP along with its two preceding SGC pipeline projects, namely the TANAP and SCPX, has obtained Project of Common Interest (PCI) status granted by the Commission, Parliament and Council being regulated by the new guidelines for the Trans-European energy infrastructure (TEN-E).²⁰² PCI status is given to major infrastructure projects and is targeted at fostering the obtaining of required licenses

¹⁹⁶ Tsurkov, Maksim. 2015. *BP becomes shareholder of TANAP*. Available at: <http://en.trend.az/business/energy/2373698.html>. Last visited on 23.05.2015. (Tsurkov 2015)

¹⁹⁷ Alam, Sorwar. 2015. *BP, SOCAR and BOTAS sign deal on TANAP gas pipeline project*. Available at: <http://english.yenisafak.com/mobil/economy/bp-socar-and-botas-sign-deal-on-tanap-gas-pipeline-project-2096588>. Last visited on 23.05.2015. (Alam 2015)

¹⁹⁸ Tinas, Murat. 2015. *Turkey Will Hold Talks with New Partners for Tanap, Yildiz Says*. Available at: <http://www.naturalgaseurope.com/turkey-will-hold-talks-with-new-partners-for-tanap-yildiz-says-23535>. Last visited on 23.05.2015.

¹⁹⁹ Tsurkov 2015, *supra* note 198.

²⁰⁰ Tsakalidou, Ilektra. 2013. "The Southern European Corridor", *European Union Institute for Security Studies Issue Alert, No. 21*. (Tsakalidou 2013, p. 1)

²⁰¹ Embassy of the Republic of Azerbaijan to the Kingdom of the Netherlands. 2013. "Azerbaijan's Gas to TAP into Europe". Available at: <http://www.azembassy.nl/files/file/pr02.pdf>. Last visited on 27.05.2015.

²⁰² European Commission. 2014c. *Projects of Common Interest by Country*. Available at: http://ec.europa.eu/energy/sites/ener/files/documents/2013_pci_projects_country_0.pdf. Last visited on 27.05.2015.

and permits as well as optimizing regulatory processes. Intending to put an end to the energy isolation of certain EU countries, PCIs support these in integrating their energy markets and facilitate diversification of their energy sources. Recognition of TAP, TANAP, and SCPX as PCIs validates the EU's political support at the highest possible level for these projects and their conduct.²⁰³

Apart from PCI status, TAP has been chosen as a Project of Energy Community Interest (PECI). After assessing one hundred various projects, the Commission has chosen 35 PECIs, amongst which TAP is also included. This preference is granted to those projects that are considered by the Energy Community Secretariat as having the most positive influence in the potentially largest number of Contracting Parties.²⁰⁴

On 13 February 2013 the governments of Greece, Italy, and Albania signed a trilateral Intergovernmental Agreement (IGA) at the Ministry of Foreign Affairs in Athens.²⁰⁵ With this Agreement the three states confirmed their complete support for and devotion to TAP. Having been ratified by the parliaments of Greece, Italy, and Albania, the IGA aims to guarantee that the three countries will collaborate in the due time delivery and effective implementation of the TAP.²⁰⁶ Moreover, Individual Host Government Agreements (HGAs), which define the method of TAP's realization and operation in each state, have been signed with Greece and Albania as well.²⁰⁷

3.4.1. Infrastructure

In selecting an optimal route for the TAP, prevalence was given to ensuring technical and commercial opportunities, at the same time, paying attention to the matter of preservation of the environment. Taking its start near Kipoi on the Turkish-Greek border, TAP will link there with TANAP and proceed onshore running through the whole territory of Northern Greece, which is its longest route. Heading then from east to west, TAP will continue its way through Albania to the Adriatic coast. The pipeline's offshore section will start near Fier in Albania and cross the Adriatic Sea to bind with the Italian gas transportation network in the Southern part of the

²⁰³ Trans Adriatic Pipeline. *The EU Status*. Available at: <http://www.tap-ag.com/the-pipeline/the-big-picture/the-eu-status>. Last visited on 27.05.2015.

²⁰⁴ *Ibid.*

²⁰⁵ Hellenic Republic Ministry of Foreign Affairs. 2013. Foreign Ministry announcement on the signing of the Greek-Albanian-Italian Trilateral Intergovernmental Agreement on the construction of the Trans Adriatic Pipeline (TAP). Available at: <http://www.mfa.gr/en/current-affairs/news-announcements/foreign-ministry-announcement-on-the-signing-of-the-greek-albanian-italian-trilateral-intergovernmental-agreement-on-the-construction-of-the-trans-adriatic-pipeline-tap-2.html>. Last visited on 27.05.2015.

²⁰⁶ Trans Adriatic Pipeline. 2013. *Greece, Italy and Albania sign a tri-lateral intergovernmental agreement, demonstrating their full support for TAP*. Available at: <http://www.tap-ag.com/news-and-events/2013/02/13/greece-italy-and-albania-sign-a-tri-lateral-intergovernmental-agreement-demonstrating-their-full-support-for-tap>. Last visited on 27.05.2015.

²⁰⁷ Trans Adriatic Pipeline. *Strategic Partnerships*. Available at: <http://www.tap-ag.com/the-pipeline/the-big-picture/strategic-partnerships>. Last visited on: 27.05.2015.

country.²⁰⁸ In April 2015, Melendugno in the Apulia region was chosen as the pipeline's landing point.²⁰⁹

With the pipeline's start of construction planned for 2016, TAP's total length will be around 870 km: 545km in Greece; 211km in Albania; 105km in the Adriatic Sea; and 8km in Italy. The part running through the mountainous areas of Albania will make up TAP's peak, reaching 1800 meters, whereas the pipeline's lowest point will lie at a level of 820 meters beneath the Adriatic Sea.²¹⁰

Taking into consideration possible upcoming needs, the creators of TAP provided the pipeline with flexible capacity allowing the expansion of gas transportation from 10 bcm to 20 bcm annually by adding two extra compressor stations. What is more, the initially projected 10 bcm will cover the energy needs of ca. seven million European households, giving grounds to expect twice that much gas supply in the future. On top of that, TAP will be capable of providing so-called "physical reverse flow". This means that the pipeline will guarantee constant gas flow in the case of supply interruptions or necessity for additional gas in the region by enabling the redirection of gas from Italy to South East Europe.²¹¹ Besides, additional energy securing measures for South East Europe might be provided through a planned development of an underground natural gas storage facility in Albania.²¹²

Throughout its route, TAP is constructed to connect with a range of already operating and projected pipelines. This kind of structure would allow for the transportation of Caspian gas to be delivered to different corners of Europe: the Italian natural gas grid, having Snam Rete Gas as its operator, will be connected to TAP and gain the position of directing gas further to necessary destinations in Europe; Austria and Central Europe can benefit from receiving gas delivered through TAP after its connection with the Trans Austria Gas (TAG) pipeline, making use of swaps and reverse flow; being transported through Switzerland, Caspian gas will reach Germany and France by means of reverse flow via the Transitgas pipeline; the UK will profit by obtaining natural gas based on an agreement between grid operators Snam Rete Gas and Fluxys binding the gas markets of Italy, Switzerland, Germany, the Netherlands, and Belgium; using an interconnector to the Kula-Sidirokastro line and/or a suggested linkage to the projected Interconnector Greece Bulgaria (IGB) pipeline, TAP may allow a new gas source; TAP is considering cooperation with the creators of the projected Ionian Adriatic Pipeline (IAP) to enable energy supply to markets with no gas in Southern Croatia, Albania, Montenegro, and Bosnia and Herzegovina, i.e. regions of high dependence on a single gas supplier.²¹³

²⁰⁸ Trans Adriatic Pipeline. *Trans Adriatic Pipeline Route*. Available at: <http://www.tap-ag.com/the-pipeline/route-map>. Last visited on 27.05.2015.

²⁰⁹ Natural Gas Europe. 2015. *Rome Approves Tap's Landing Point*. Available at: <http://www.naturalgaseurope.com/rome-approves-taps-landing-point-23450>. Last visited on 27.05.2015.

²¹⁰ Trans Adriatic Pipeline. *Trans Adriatic Pipeline Route*, *supra* note 210.

²¹¹ Trans Adriatic Pipeline. *TAP at a Glance*. Available at: <http://www.tap-ag.com/the-pipeline>. Last visited on 27.05.2015.

²¹² Hafner, Manfred. 2014. "The Southern Gas Corridor and the EU Gas Security of Supply: What's Next?", *Caspian Report, Issue 08*. (Hafner 2014, p. 26)

²¹³ Trans Adriatic Pipeline. *Southern Gas Corridor*. Available at: <http://www.tap-ag.com/the-pipeline/the-big-picture/southern-gas-corridor>. Last visited on 27.05.2015.

3.4.2. Shareholders

The TAP project's shareholding has been changing drastically over recent years. In February 2008, Statoil and the Swiss energy company EGL Group (now Axpo) signed an agreement establishing the TAP AG, a 50/50 joint venture, to develop, construct, and operate the pipeline.²¹⁴ In May 2010, Statoil and EGL disclosed that the German E.ON Ruhrgas would be joining TAP, stressing the strategic importance of this move towards implementation of the project. As a result, the shareholder structure looked as follows: EGL (42.5%), Statoil (42.5%), and E.ON Ruhrgas (15%).²¹⁵ In July of the same year, the successful financial close of the transaction was announced.²¹⁶

Two years later, an agreement on securing the pipeline's funding was signed between the shareholders of the TAP project and the Shah Deniz consortium members, at that time consisting of BP, SOCAR, and the French oil and gas company Total.²¹⁷ This agreement also provided the Shah Deniz shareholders with an option to obtain up to 50% equity in the TAP project.²¹⁸ In June 2013, BP, SOCAR, and Total became shareholders in TAP, whereby the first two companies acquired shares in the amount of 20% and Total received 10%. Moreover, the project was also joined by Fluxys – a major gas transit operator based in Belgium – taking a 16% share. At that point, TAP's shareholding was arranged as follows: BP (20%), SOCAR (20%), Statoil (20%), Fluxys (16%), Total (10%), E.ON Ruhrgas (9%), and Axpo (5%).²¹⁹

In September 2014, TAP gained a new shareholder, namely the Spanish natural gas transmission company Enagás, which acquired a 16% share in the project. Besides, Fluxys increased its share from 16% to 19%. The new shareholding structure is the result of Enagás and Fluxys purchasing the 19% shares of TAP, which were prior to that held by Total (10%) and E.ON Ruhrgas (9%). Hence, the present shareholding of TAP comprises BP (20%), SOCAR (20%), Statoil (20%), Fluxys (19%), Enagás (16%), and Axpo (5%).²²⁰

Paying much attention to environmental protection, social responsibility, and safety within their enterprises, the shareholders in the TAP project are concerned to carry out the best possible industry practice. What is more, TAP acts in compliance with the criteria of the European Bank for Reconstruction and Development (EBRD)

²¹⁴ Statoil. 2008. *Joins EGL in Trans Adriatic Pipeline Gas Project*. Available at: <http://www.statoil.com/en/NewsAndMedia/News/2008/Pages/TransAdriatic.aspx>. Last visited 27.05.2015.

²¹⁵ Smith, Christopher E. 2010. *E.On Ruhrgas joins Trans Adriatic Pipeline*. Available at: <http://www.ogj.com/articles/2010/05/e-on-ruhrgas-joins.html>. Last visited on 27.05.2015.

²¹⁶ Begum, Aleya. 2010. *E.ON firms TAP stake*. Available at: <http://www.upstreamonline.com/live/article1196569.ece>. Last visited on 27.05.2015.

²¹⁷ In May 2014 Total sold its entire share (10%) to TPAO as a shareholder from Shah Deniz.

²¹⁸ Reuters. 2012. *BP, Socar, Total pledge to fund gas pipeline-TAP*. Available at: <http://www.reuters.com/article/2012/08/09/nabucco-tap-idUSB5E8IH02920120809>. Last visited on 27.05.2015.

²¹⁹ Trans Adriatic Pipeline. 2013. *BP, SOCAR, Total and Fluxys join the TAP project*. Available at: <http://www.tap-ag.com/news-and-events/2013/07/30/bp-socar-total-and-fluxys-join-the-tap-project>. Last visited on 27.05.2015.

²²⁰ Leon, Audrey. 2014. *Enagas joins Trans Adriatic Pipeline*. Available at: <https://www.oilonline.com/industry-news/midstream/enegas-joins-trans-adriatic-pipeline>. Last visited on 27.05.2015.

and other international financing organizations on a voluntary basis.²²¹ The overall costs of the project are expected to reach about 10-11 billion dollars.²²²

3.5. TANAP and TAP advantages over Nabucco

During the summit called "Southern Corridor - New Silk Road" in Prague in May 2009, the participating States discussed among other important issues the realization of a project that was already planned in 2002 by a consortium organized by the Austrian oil and gas company OMV, the Hungarian MOL Group, Bulgarian natural gas distribution company Bulgargaz, the Romanian Transgaz company, and Turkish BOTAŞ. This project was named Nabucco.²²³

Made up of these five companies, the consortium decided to collaborate on the evolution of Nabucco – a planned pipeline with a length of 3800 km and a capacity of 31 bcm annually projected to transport natural gas from Azerbaijan, Turkmenistan, Iran, Iraq, and Egypt to South East and Central Europe with a transit in Turkey. The project received immediate political support from the EU, Turkey, and the USA. Each of these sides pursued their own interests in developing the Nabucco project. For Turkey the project would give the possibility of implementing its long-term strategic goal of turning into a major energy corridor connecting the Eastern energy rich states with the Western energy importing EU market. The EU, in turn, saw the project as a chance to enable diversification of its supplies of gas, thus decreasing dependence on Russia. This is why Nabucco was not only intended to be financially supported by the EU but also became the flagship project of the SGC. The USA regarded Nabucco as a significant geopolitical asset to diminish Russia's energy dominance in the EU.²²⁴

Yet, in spite of this strong political support from the transit countries as well as the EU and the USA, the project eventually failed due to several reasons of commercial and financial origin. Among the reasons were issues on financing the project and obtaining bank loans because the banks required guarantees as well as long-term ship or pay contracts that could not be delivered by the market. Another big point of concern was linked to the complications of bringing gas to the EU via Turkey from all the potential supplying states with the exception of Azerbaijan.²²⁵

As a consequence, the EU proposed its support for any other project capable of reaching goals equal to those of Nabucco. So, a range of activities carried out by the EU, energy enterprises and, especially, Azerbaijan and Turkey resulted in a total reshaping of the SGC and a new infrastructure for bringing Shah Deniz Stage 2 gas to Turkey – the TANAP project.²²⁶

In contrast to Nabucco, which with the five transit states involved (Turkey, Bulgaria, Romania, Hungary, and Austria) was deemed a multilateral project, TANAP was initiated as a producer-directed bilateral project between Azerbaijan and Turkey.

²²¹ Trans Adriatic Pipeline. *TAP at a Glance*, *supra* note 213.

²²² Jafarova, Aynur. 2014b. *Turkey to privatize part of stakes in TANAP*. Available at: http://www.azernews.az/oil_and_gas/64805.html. Last visited on 28.05.2015.

²²³ Hafner 2014, *supra* note 214, p. 22.

²²⁴ *Ibid*, pp. 22-23.

²²⁵ *Ibid*, p. 24.

²²⁶ Erdogdu 2014, *supra* note 169, p. 7.

Anchored by the MoU, the Host Government Agreement, and the Intergovernmental Agreement, the bilateral relationship between the two countries was clearly not a symmetrical one, but rather unbalanced with SOCAR initially designed to own an 80% stake and the Turkish partners BOTAS and TPAO holding 15% and 5% respectively.²²⁷ This proportion has changed with time, presenting a more harmonized structure²²⁸ with SOCAR possessing 58% of the shares and hence further maintaining a controlling share in TANAP as well as operatorship of the line in the upcoming years.²²⁹

Another advantage of TANAP lies in its financing. The bigger part of the ca. 10-11 billion dollar costs can be easily covered by Azerbaijan. Between 2001 and 20 February 2014, the State Oil Fund of the Azerbaijan Republic (SOFAZ) gained significant oil revenues from development of the ACG field. These exceeded 97 billion dollars,²³⁰ thus significantly contributing to the Fund's total sum of assets. As of 1 October 2014, the assets of SOFAZ were estimated at 37,305 billion dollars.²³¹ All in all, being calculated as far more affordable, TANAP with its introduction to the SGC infrastructure condemns the Nabucco project to failure.

In May 2012, in an attempt at recreation, Nabucco offered to build a smaller pipeline with a capacity of 23 bcm. The pipeline, named Nabucco West, was intended to link with TANAP at the Turkish frontier and head to Austria, transiting Bulgaria, Romania, and Hungary.²³² However, as with the previous Nabucco project, Nabucco West did not achieve much success. Instead, the winning project that was chosen to deliver Shah Deniz Stage 2 gas to the EU became the TAP project.

Preferring TAP over Nabucco West was a disappointment for the supporters of Nabucco. The reason for this point of view was to be found in the Central and Eastern European (CEE) countries' acuter necessity to secure their energy supplies due to their higher dependence on Gazprom. Reaching Austria, Nabucco West would be in a position to meet the needs of the CEE region. On the contrary, TAP would deliver gas to Italy, the import portfolio of which is better diversified. Nevertheless, the strategic and political preference of Nabucco West was steadily weakened by the growing commercial prevalence of TAP. The TAP consortium proposed relatively low transport fees and higher prices at the pipeline's destination point as well as presenting itself as a self-reliant project because its financing would be implemented by shareholders and not by international financial establishments. On top of that, SOCAR's purchase of the Greek pipeline operator DESFA in June 2013 contributed further in favor of the TAP deal.²³³ As a result, choosing TAP once more proved that

²²⁷ Hafner 2014, *supra* note 214, p. 24.

²²⁸ The entire structure including all shareholders is given in section 3.3.2.

²²⁹ Hafner 2014, *supra* note 214, p. 25.

²³⁰ Jafarova, Aynur. 2014a. *SOFAZ makes ACG, Shah Deniz revenues public*. Available at: http://www.azernews.az/oil_and_gas/64860.html. Last visited on 28.05.2015.

²³¹ Ismayilov, Emil. 2014. *Azerbaijani State Oil Fund announces volume of revenues from Shah Deniz Project*. Available at: <http://en.trend.az/business/energy/2346214.html>. Last visited on 28.05.2015.

²³² Erdogdu 2014, *supra* note 169, p. 8.

²³³ Yeni, Fatih Özgür. 2013. "Thinking Beyond TAP: Turkey's Role in the Southern Energy Corridor", *Istituto Affari Internazionali Working Papers 13/32*. (Yeni 2013, p. 7)

political volition alone is not sufficient for implementation of such notable international investments without having strong financial backup.

As regards the economic impact on the participating countries, the opening of the SGC for delivery of Shah Deniz Stage 2 gas will bring several benefits for the supplier and transit states. Azerbaijan, as a resource producing country, will be able to demonstrate its growing influence as a key supplier in the region. The country will obtain new onshore assets, offshore facilities, and export infrastructure, all constructed in compliance with international standards employing the most sophisticated technology.²³⁴ Moreover, the pipeline projects will positively influence economic prosperity in all countries involved, particularly during the period of construction. The projects will contribute to the creation of new jobs in those countries and foster the growth of their energy infrastructures, simultaneously attracting foreign direct investment (FDI). Being the main destination, the Italian gas market will also be notably secured. Natural gas makes up one third of the country's energy consumption, whereas its supply is import-dependent for over 90%. Consequently, a sufficient and well-diversified gas import structure "is a priority for the reliability of energy supplies to the Italian economy."²³⁵ All in all, the participating countries could indeed benefit from the project both from an economic and security of supply perspective.

3.6. Concluding remarks

The development of Shah Deniz Stage 2 gave a major impulse for the launch of the SGC bringing Caspian gas from Azerbaijan directly to the EU. Shah Deniz gas that will be transported via the SCPX, TANAP, and TAP will considerably alter the existing scheme of energy supply, thus diversifying and securing Europe's energy map. With the evolution of the planned TANAP and TAP pipelines, another giant project, namely Nabucco, experienced failure due to the first two projects being more feasible to realize. While Nabucco was from a financial side chiefly EU-bounded, one of the decisive factors acting in favour of TANAP and TAP was Azerbaijan's readiness to finance the bigger part of the projects as well as Turkey's appearance as a co-financer. Owing to TANAP and TAP, Europe will receive extra 10 bcm of natural gas per year with the perspective of doubling this amount in the future. This will present a crucial step towards South East Europe's security of energy supply. Moreover, the additional gas volumes will bring several benefits to the region's economy, providing new jobs and enhancing natural gas infrastructure in the respective countries.

²³⁴ British Petroleum. Shah Deniz 2 and the Opening of the Southern Corridor, *supra* note 179, p. 17.

²³⁵ Verda, Matteo. 2014. "Contribution of Tap to the Italian Economy", *Italian Institute For International Political Studies (ISPI) Analysis, No. 256*. (Verda 2014, p. 3)

Conclusions

Natural gas is considered as a substantial element of the EU's energy mix, reaching almost one quarter of its total energy consumption. Yet, due to the drop in internal gas production (especially in the Netherlands and the UK), the EU is facing a growing need in terms of imports from external suppliers. This, in turn, binds the EU with higher import dependency levels. As a consequence of this situation, the EU is becoming more vulnerable to a variety of risks having the potential to endanger its supply security.

This paper has dealt with the legal and economic aspects as well as geopolitical factors related to European natural gas security of supply. With regard to the current state of the EU's security of natural gas supply, the paper provided a historical background prior to the currently existing state. The status quo replenished by statistics is characterized by extreme dependence on imports from abroad.

Deriving from that, the need for reconsideration of legal acts and policy documents targeted at regulating secure supplies of an import-dependent EU has been further exposed in the paper. The gas supply cut-offs in 2006 and 2009 prompted the EU to search for solutions which would govern and provide uninterrupted supplies in the future. In this regard, attempting to intensify the EU's gas supply security, in 2008 the Commission released an Energy Security and Solidarity Action Plan, which for the first time mentioned the SGC as a set of alternative infrastructure projects bringing Caspian and Middle Eastern gas to Europe. Aside from that, the EU introduced the Third Internal Market Legislative Package aimed at enhancing the internal energy market in order to accelerate gas flows between the Member States of the EU. By the end of 2009, the Lisbon Treaty presented an intrinsic legal basis for the sphere of energy with establishment of Article 194 of the TFEU. Pursuant to the provisions of this Article, the EU, among other essential matters, aims to guarantee security of energy supply within its Member States and facilitate the interconnection of energy networks.

Aiming to strengthen the regulatory basis on security of gas supply, the EU went further by deciding to replace the Gas Security of Supply Directive with the Gas Security of Supply Regulation, which was expected to be more consistent than its predecessor as regards the main issue of concern. Considering the security of gas supply matter through the prism of the latest conflict between Russia and Ukraine, the EU recognized the urgent necessity of taking even more resolute steps towards a more sophisticated method of determining and maintaining the domestic energy market. Hence, the Commission published the European Energy Security Strategy followed by the Energy Union Package, both of which stress the re-emerged need for diversifying energy sources by finding new supply solutions bypassing Russia. Again, the Commission underlined the SGC as one of the EU's highest priorities concerning energy security and drew attention to the necessity to foster activities on its realization.

Analysis of EU legislation and policy developments has given grounds to clarify the framework within which the issue of security is reflected and supported. It is evident that regulatory measures have been in place to achieve the set objective.

In other words, the EU has been continuously making efforts towards improving its legislation and trying to keep it to the most updated level possible.

In quest of ensuring reliable and uninterrupted energy supplies for its citizens, the EU has been striving to reinforce legal and political relations with its primary as well as future potential gas-importers by means of various agreements. However, the EU has not been able to achieve success in all areas. With a view to establishing a Eurasian energy partnership, the ECT is experiencing a notable shortcoming in the shape of its lacking the participation of the EU's major gas supplier, i.e. Russia.

With respect to the EU's response to the possible risks to its gas security, the author focused on the Commission's initiative for a fourth major corridor, namely the SGC. Owing to solid investment in development of the Shah Deniz Stage 2 gas field, Azerbaijan arose as the primary and still the only realizable supplier among many others. In this way, Shah Deniz Stage 2 gas became the window of opportunity for the current implementation of the SGC. The route chosen for the SGC's delivery of Azerbaijani gas consists of three pipeline projects, which imply extension of the currently existing SCP running through Azerbaijan and Georgia; TANAP, which will transport Shah Deniz gas across Turkey; and, finally, TAP, which will deliver gas to Europe by transiting Greece and Albania and landing in Italy. For a number of reasons, involving those of a financial and political character, the latter two projects replaced the long-cherished Nabucco and Nabucco West pipeline projects.

With successful realization of the above mentioned projects that would supply Europe with an additional 10 bcm of natural gas bypassing Russia, the SGC would provide an outstanding possibility to diversify Europe's energy mix and reduce its dependence on Russia in the short to medium term. Having the potential to further expand the pipelines involving Central Asian and, possibly, even Iranian gas reserves, the SGC projects could also contribute to Europe's energy security in the long term.