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# CRUSHING EUROPE'S PIPELINE DREAMS: RUSSIA'S MINERAL MONOPOLY, WEAKNESS IN THE EUROPEAN ENERGY MARKET, AND REALISM IN THE FUTURE

DANIEL DOTY\*

## INTRODUCTION

Since the collapse of the Soviet Union in 1991, the European Union has been working to integrate its energy market.<sup>1</sup> The goal of this project was to allow the European Union to speak with a “common voice”<sup>2</sup> in its dealings with supplier countries.<sup>3</sup> Many of these countries were located in the crumbling Soviet Union and Warsaw Pact, which were rapidly becoming more accessible to Western markets.<sup>4</sup> At the same time, the Russian Federation was recovering from the death of the USSR. During and because of privatization in the 1990s, a handful of mega-corporations came to dominate Russia's oil and natural gas markets.<sup>5</sup> During Vladimir Putin's first eight years as President, the Russian government effectively nationalized many of these corporations.<sup>6</sup> They subsequently became important tools in Russia's foreign policy repertoire, expanding the Kremlin's clout throughout Europe.<sup>7</sup>

This Note seeks to show that the pervasiveness of Russia's influence in the politics and energy market of the European Union demonstrates

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<sup>1</sup> Andrei Konoplyanik & Thomas Walde, *Energy Charter Treaty and Its Role in International Energy*, 24 J. ENERGY & NAT. RESOURCES L. 523, 524 (2006).

<sup>2</sup> Pekka Voutilainen, *Developing Energy Policy for Europe: A Finnish Perspective on Energy Cooperation in the European Union*, 29 ENERGY L.J. 121, 131 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> *See id.*

<sup>5</sup> MARSHALL GOLDMAN, PETROSTATE 59–62 (2008).

<sup>6</sup> *Id.* at 93–135 (describing in some detail the renationalization of multiple companies under Putin). Putin first served as President of Russia from 2000 to 2008, then served as Prime Minister from 2008 to 2012, when he was reelected to the Presidency for a third term after amendments to the Russian Constitution permitted him to do so.

<sup>7</sup> *Id.*

serious systemic weaknesses in the organization and administration of the European Union's energy policy. As one researcher put it, "Russia is close to Europe; it possesses huge oil and gas reserves; and it is a natural energy supplier for the European Union."<sup>8</sup> Because Russia is Europe's largest, most aggressive, and closest supplier, its interactions with the European Union form the ideal case study for examining these weaknesses. This Note posits that the biggest flaw with both the current and proposed energy policies is that each is essentially nothing more than a free trade agreement, rather than a common market agreement transferring substantial sovereignty in energy trading to the European Union. Finally, the Note calls for a drastic change in the existing strategy to include more stringent central control and expansion of the policy's foci.

The Note will first provide a brief overview of the Union's policy as it stands now. This section will begin with a discussion of the objectives and terms of the Energy Charter Treaty ("ECT"), and address the proposed Common Energy Policy ("CEP") designed to supplement and in some ways replace the Energy Charter Treaty in use now. The section will also include a summary of a major argument in favor of the CEP's utility.<sup>9</sup>

The Note will then describe the Russian state energy monopoly; this section will be divided into two subparts focused on the monopoly's post-Cold War history and on its organization. Following this section will be a series of examples of Russia's involvement around the European Union to show some of the existing policy's vulnerabilities. The final section will be devoted to the future. Three subparts will be focused, respectively, on a more detailed discussion of the broader flaws of the existing policy; the creation of a more successful, permanent plan for the future; and a pair of potential obstacles that exist in the present and must be considered and overcome to implement the Note's proposed solutions.

I. THE POLICY AND THE PROPONENTS:  
OPTIMISM FOR AN INTEGRATED MARKET

A. *State of the Law—The Energy Charter Treaty*

As mentioned previously, the European Union has been working to develop a coherent energy policy since at least 1990.<sup>10</sup> In that year,

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<sup>8</sup> Christophe-Alexandre Paillard, *Russia and Europe's Mutual Energy Dependence*, 63 COLUM. J. INT'L AFF. 65, 65 (2010).

<sup>9</sup> See generally Voutilainen, *supra* note 2. Voutilainen's position is a prototypical example of the optimism and enthusiasm that surround most attempts at energy market integration. *Id.* A secondary purpose of this Note is to caution against the complacency that often accompanies this type of excitement.

<sup>10</sup> Konoplyanik & Walde, *supra* note 1, at 524.

Dutch Prime Minister Ruud Lubbers proposed a European Energy Community in an attempt to coordinate Western European trade with the suddenly and chaotically liberated markets in Eastern Europe.<sup>11</sup> The strategy embodied in this proposal sought to reconcile Western Europe's interests in maintaining energy security with Eastern Europe's interests in exporting its mineral resources.<sup>12</sup>

This proposal ultimately led to the European Energy Charter on December 17, 1991.<sup>13</sup> The Charter subsequently gave way to the ECT, which was signed exactly three years later on December 17, 1994, and entered into force on April 16, 1998, after the thirtieth member ratification.<sup>14</sup> Currently, fifty-one countries in Europe and Asia, and the European Union, are parties to the ECT; Russia was an observing party until October 18, 2009, at which point it effectively withdrew itself from the agreement.<sup>15</sup>

The ECT focuses on five broad areas:

[P]rotection and promotion of foreign energy investments . . . ; free trade in energy materials, products and energy-related equipment . . . ; freedom of energy transit through pipelines and grids; reducing the negative environmental impact of the energy cycle through improving energy efficiency; and mechanisms for the resolution of State-to-State or Investor-to-State disputes.<sup>16</sup>

The Treaty, with these focus areas, is the European Union's primary document governing energy trade with external suppliers.<sup>17</sup> Note that it

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<sup>11</sup> *See id.*

<sup>12</sup> *Id.* It is interesting to note that the original intent of the agreement was to *increase* interdependence between the former Soviet Union and Warsaw Pact countries and Western Europe in an effort to *protect* energy supplies. The irony of this strategy's results should remain in mind when the reader considers Europe's reluctance to change course today.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 524–25.

<sup>15</sup> *Energy Charter: Frequently Asked Questions*, ENERGY CHARTER (Oct. 12, 2011), <http://www.encharter.org/index.php?id=18>.

<sup>16</sup> ENERGY CHARTER SECRETARIAT, *THE ENERGY CHARTER TREATY AND RELATED DOCUMENTS: A LEGAL FRAMEWORK FOR INTERNATIONAL ENERGY COOPERATION* 13 (Sept. 2004) [hereinafter *ENERGY CHARTER TREATY*], available at [http://www.encharter.org/fileadmin/user\\_upload/document/EN.pdf](http://www.encharter.org/fileadmin/user_upload/document/EN.pdf).

<sup>17</sup> The European Union has developed a number of initiatives designed primarily to integrate the domestic common market for electricity and fund renewable energy innovation and development. *See* Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, 2009 O.J. (L 211) 55–93; *see also* Directive 2001/77/EC of

is jointly signed with signatories outside the European Union<sup>18</sup> and accordingly is not a mechanism custom-designed for use by the European Union's internal governing bodies.

The sources and inspiration for the content in the Energy Charter Treaty come from three major sources: bilateral investment treaties ("BITs"); the incorporation of EU directives on liberalization in areas like upstream resource licensing, resource procurement, transit, free access by third parties to transit infrastructure, and the like; and the principles of the World Trade Organization's General Agreement on Tariffs and Trade ("GATT").<sup>19</sup>

According to Konoplyanik and Walde, respectively, the former Deputy Secretary-General of the Energy Charter Secretariat and the former UN Interregional Advisor on Petroleum and Mineral Legislation, the "ECT needs to be seen today as one of the best available instruments for improving international energy security."<sup>20</sup> The reason for this, they suggest, is that the development of an interdependent energy infrastructure—one which ties together suppliers, consumers, and transit countries—ensures energy security because any short- or long-term disruptions to energy trade would not be in the best interests of any of the involved parties.<sup>21</sup>

To summarize the purpose of the ECT, the Treaty is focused primarily on removing barriers to international energy investments and on "promot[ing] fair access to markets."<sup>22</sup> The Treaty aims to create an international energy trade regime modeled primarily on NAFTA and on

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the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, 2001 O.J. (L 283), [hereinafter Directive 2001/77/EC]; *What Is the SET-Plan?*, EUROPEAN COMMISSION, <http://setis.ec.europa.eu/about-setis/what-is-the-set-plan> (last visited Mar. 24, 2013) [hereinafter *What Is the SET-Plan?*]. See generally EUROPEAN WIND ENERGY ASSOCIATION, EU ENERGY POLICY TO 2050: ACHIEVING 80–95% EMISSIONS REDUCTIONS (Mar. 2011) [hereinafter EU ENERGY POLICY TO 2050], available at [http://www.ewea.org/fileadmin/ewea\\_documents/documents/publications/reports/EWEA\\_EU\\_Energy\\_Policy\\_to\\_2050.pdf](http://www.ewea.org/fileadmin/ewea_documents/documents/publications/reports/EWEA_EU_Energy_Policy_to_2050.pdf).

<sup>18</sup> *Id.* at 17. Some non-European Union signatories include Australia, Japan, Kazakhstan, Kyrgyzstan, and Mongolia, while observers include countries from all continents—China, Canada, Iran, the United States, Venezuela, and Nigeria are just some of the observing parties. *Id.*

<sup>19</sup> Konoplyanik & Walde, *supra* note 1, at 528. For more discussion on the international legal impact of GATT, see DUKE UNIVERSITY, RESEARCH GUIDE: GATT/WTO (2011), available at <http://www.law.duke.edu/lib/researchguides/pdf/gatt.pdf>.

<sup>20</sup> Konoplyanik & Walde, *supra* note 1, at 529.

<sup>21</sup> See *id.*

<sup>22</sup> *Id.* at 531.

BITs developed by the United States and the United Kingdom.<sup>23</sup> To put it another way, the Treaty is a free trade agreement, without being defined explicitly as such.

*B. Developing Law—The Common Energy Policy*

In 2007, Europe recognized the need for an integrated consumption plan and began drafting CEP, which would apply only to the European Union.<sup>24</sup> This section discusses some of the main points of the CEP and how it differs from the existing ECT. When reading this section, it is important to keep in mind that the CEP as it stands right now is nothing more than a proposal.<sup>25</sup> There exists in Europe no binding policy for the whole of the European Union.<sup>26</sup>

A 2008 paper authored by a prominent Finnish diplomat expressed optimism about the 2007 draft of the CEP, and about the future of the policy in Europe.<sup>27</sup> The author of this paper, like many at the time, believed that the 2007 plan was a significant step toward the integration of the energy market.<sup>28</sup> More importantly, he saw it as a move toward the day when the European Union speaks with one voice to meet “the challenges of oil and gas geopolitics.”<sup>29</sup> The paper goes so far as to suggest that the draft puts the “development of a common energy policy back at the heart of EU action,” which he likens to a return to the principles behind Euratom and the European Coal and Steel Community.<sup>30</sup>

According to Voutilainen, energy security is an important focus of the integrated market.<sup>31</sup> In his eyes, the 2007 policy placed an emphasis on the importance of solidarity between member states and the diversification of supplier countries and transportation routes.<sup>32</sup> He

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<sup>23</sup> *Id.* at 532.

<sup>24</sup> *An Energy Policy for Europe*, Communication from the Commission to the European Council and the European Parliament on Oct. 1, 2007, available at [http://ec.europa.eu/energy/energy\\_policy/doc/01\\_energy\\_policy\\_for\\_europe\\_en.pdf](http://ec.europa.eu/energy/energy_policy/doc/01_energy_policy_for_europe_en.pdf).

<sup>25</sup> Jacques Delors, *Energy Policy Needs 'More Europe'*, NEW EUROPE ONLINE (Jan. 30, 2012), <http://www.neurope.eu/article/energy-policy-needs-more-europe-exclusive>. Jacques Delors “is a French economist and politician, [and was] the eighth president of the European Commission.” *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See generally Voutilainen, *supra* note 2.

<sup>28</sup> *Id.* at 131.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 123.

<sup>31</sup> *Id.* at 125.

<sup>32</sup> *Id.*

specifically mentions Russia, stating that the dialogue between the European Union and Russia is central to the issue of supply security<sup>33</sup> and cites the sheer volume of the energy trade between the two.<sup>34</sup> Tellingly though, while Voutilainen's analysis mentions the importance of energy security, the four strategic goals that the EU Council itself outlined for the Energy Policy did not include any mention of supply security.<sup>35</sup> The drafters instead focused on issues of energy efficiency and the performance of the domestic energy market.<sup>36</sup>

Indeed, the policy discussion surrounding energy security in Voutilainen's paper is surprisingly sparse. The author suggests that "dialogue with [other] consuming countries is becoming more important to external energy relations,"<sup>37</sup> and that "[the] EU will . . . strive to develop energy partnerships with these countries that are transparent, predictable, and reciprocal."<sup>38</sup> The most specific language he uses in the discussion surrounds transit countries, mentioning the development of a Memorandum of Understanding on energy with Ukraine and the implementation of an "early warning mechanism" with Belarus.<sup>39</sup>

The most starkly telling statement concerns an anecdote about a group of heads of state discussing energy issues with President Putin at an EU summit meeting "using one collaborative voice."<sup>40</sup> The story conjures an image of a group of contrite children finally gathering the courage to ask an adult for a favor. Voutilainen goes on to say he is "mildly optimistic that the EU [can] find enough common ground to develop joint approaches" to energy security.<sup>41</sup>

The tenor of this article suggests that the primary reason for optimism about the development of a common energy policy is the CEP's plan for the domestic market. The language regarding dealings with external suppliers is tepid at best. However, this approach to energy suppliers—"wait until we have handled the domestic issues before we

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<sup>33</sup> Voutilainen, *supra* note 2, at 130.

<sup>34</sup> *Id.* at 135. The data Voutilainen cites in his article—import and export figures from 2004—demonstrates the feebleness of the European Union's efforts to diversify suppliers. Imports from Russia of gas and oil are listed at twenty-four percent and twenty-seven percent, respectively; a virtual margin-of-error difference from their present (higher) levels. *Id.* at 134; *see also* Paillard, *supra* note 8 and accompanying text.

<sup>35</sup> Voutilainen, *supra* note 2, at 128.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 134.

<sup>38</sup> *Id.* at 135.

<sup>39</sup> *Id.* at 136.

<sup>40</sup> *Id.* at 137–38.

<sup>41</sup> Voutilainen, *supra* note 2, at 138.



address foreign trade policy”—is a dangerous path to take.<sup>42</sup> Dominant suppliers like Russia are capable of taking advantage of chinks in the Union's armor in a way that ultimately disturbs the efficiency of the Union's domestic markets as well.<sup>43</sup>

## II. THE SUPPLIER: RUSSIA'S ENERGY MONOPOLY

### A. *Post-Cold War*

While Europe was attempting to develop a common energy market, the Russian Federation was experiencing the aftershocks of the cataclysmic fall of Communism.<sup>44</sup> The same epochal event that gave Europe incredible opportunities to expand trade with the former Warsaw Pact<sup>45</sup> gave way to a frenzy of barely regulated privatization in Russia.<sup>46</sup> Voucher privatization and the loans-for-shares program that replaced it were a one-two punch to the middle and lower classes, and the accompanying chaos lasted through much of the 1990s.<sup>47</sup> The upshot of these programs was that a handful of men came to control most of Russia's wealth; these oligarchs owned virtually all the telecommunications companies, manufacturing plants, and most importantly, the instruments of oil and natural gas extraction and production.<sup>48</sup>

The rapid privatization and consolidation of wealth did not last long, however. After being appointed President in 1999 by his predecessor, Boris Yeltsin, Vladimir Putin was elected in his own right in 2000.<sup>49</sup> Putin's inauguration marked a new era in Russia. More quickly than they had been privatized under the oligarchs, Russia's largest oil and natural gas monopolies were effectively nationalized.<sup>50</sup> Companies like Gazprom, Yukos, TNK,

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<sup>42</sup> *See id.*

<sup>43</sup> *See infra* Part III.

<sup>44</sup> THE WORLD BANK, FROM DISINTEGRATION TO REINTEGRATION: EASTERN EUROPE AND THE FORMER SOVIET UNION IN INTERNATIONAL TRADE 2 (Harry G. Broadman ed., 2006), available at <http://siteresources.worldbank.org/INTECA/Resources/tradereport-complete.pdf>.

<sup>45</sup> *See generally id.* (analyzing the trade relations of twenty-seven former Soviet countries, finding generally that they are more integrated in the world economy now than “at any time since the Russian Revolution”).

<sup>46</sup> GOLDMAN, *supra* note 5, at 63–65 (background on loans for shares); JEFFREY SACHS, THE END OF POVERTY 143–44 (2005) (detailing the impact on the Russian people).

<sup>47</sup> SACHS, *supra* note 46, at 143–44.

<sup>48</sup> GOLDMAN, *supra* note 5, at 97–103.

<sup>49</sup> *Presidents of Russia—Biographies*, KREMLIN (Jan. 31, 2012), [http://archive.kremlin.ru/eng/articles/presidents\\_eng.shtml](http://archive.kremlin.ru/eng/articles/presidents_eng.shtml).

<sup>50</sup> GOLDMAN, *supra* note 5, at 104–105.



and Rosneft all came under the control of the Kremlin after the oligarchs who owned them were exiled, incarcerated, or otherwise neutralized.<sup>51</sup>

*B. Current Structure of the Energy Monopoly*

The five largest energy companies in Russia are Gazprom,<sup>52</sup> LUKoil,<sup>53</sup> Rosneft,<sup>54</sup> TNK-BP,<sup>55</sup> and Surgutneftegas.<sup>56</sup> Of these, two—Gazprom<sup>57</sup> and Rosneft<sup>58</sup>—are directly owned and controlled by the state. LUKoil, while privately owned, is heavily influenced by state policy; most if not all energy deals, major acquisitions, and major sales followed extensive consultation with Vladimir Putin.<sup>59</sup> Putin was even in attendance during the opening of LUKoil's first gas station in New York City.<sup>60</sup> Surgutneftegas is similarly privately owned but state-influenced; its owner, Victor Bogdanov, is a former government energy manager<sup>61</sup> who only rarely deviates from the State's energy policies.<sup>62</sup>

Of the top five energy companies, only TNK-BP can claim private control, but not for lack of contest. The company is owned half by BP and half by a Russian company called AAR.<sup>63</sup> In 2008 the Russian government kicked Robert Dudley, then the CEO of TNK-BP, out of the country for two years.<sup>64</sup> Just recently a Russian court threw out a complaint by

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<sup>51</sup> *Id.* at 105, 114–16.

<sup>52</sup> *Global 500: 35. Gazprom*, FORTUNE MAG. (July 25, 2011), available at <http://money.cnn.com/magazines/fortune/global500/2011/snapshots/10542.html>.

<sup>53</sup> *Global 500: 69. LUKoil*, FORTUNE MAG. (July 25, 2011), available at <http://money.cnn.com/magazines/fortune/global500/2011/snapshots/10657.html>.

<sup>54</sup> *Global 500: 179. Rosneft Oil*, FORTUNE MAG. (July 25, 2011), available at <http://money.cnn.com/magazines/fortune/global500/2011/snapshots/11314.html>.

<sup>55</sup> *Global 500: 235. TNK-BP International*, FORTUNE MAG. (July 25, 2011), available at <http://money.cnn.com/magazines/fortune/global500/2011/snapshots/11572.html>.

<sup>56</sup> *Global 500: 496. Surgutneftegas*, FORTUNE MAG. (July 25, 2011) available at <http://money.cnn.com/magazines/fortune/global500/2011/snapshots/11311.html>; see *Fortune Global 500*, FORTUNE MAG. (July 25, 2011), available at [http://money.cnn.com/magazines/fortune/global500/2011/full\\_list/index.html](http://money.cnn.com/magazines/fortune/global500/2011/full_list/index.html) (listing no other Russian energy companies apart from those mentioned in the preceding footnotes).

<sup>57</sup> *Gazprom in Questions and Answers*, GAZPROM, <http://eng.gazpromquestions.ru/index.php?id=10> (last visited Mar. 24, 2013).

<sup>58</sup> *Rosneft at a Glance*, ROSNEFT, <http://www.rosneft.com/about/> (last visited Mar. 24, 2013).

<sup>59</sup> GOLDMAN, *supra* note 5, at 126.

<sup>60</sup> *Id.* at 125.

<sup>61</sup> *Id.* at 61.

<sup>62</sup> *Id.* at 124.

<sup>63</sup> *Id.* at 126–27.

<sup>64</sup> Louise Armitstead, *TNK-BP's Chief Accuses Russians of Power Abuse*, THE TELEGRAPH (Aug. 23, 2008), <http://www.telegraph.co.uk/finance/newsbysector/energy/2795202/TNK>

AAR, the Russian half of TNK-BP, against BP for an alleged violation of an exclusivity agreement.<sup>65</sup>

Russia's mineral resource industry is both massive and extremely important to the European Union's energy markets. For purposes of illustration, Rosneft is ranked 179th on Fortune's Global 500 list.<sup>66</sup> More impressively, Gazprom is now the thirty-fifth largest company in the world, with annual revenues of over \$118 billion and, according to company literature, possesses the world's largest gas reserves.<sup>67</sup> Additionally, the European Union currently imports over half of its oil and gas.<sup>68</sup> Russia is the primary supplier of both, currently supplying close to one-third of the European Union's supply of each resource.<sup>69</sup>

The sheer size of the industry inherently carries with it substantial weight to throw around in the policy arena if the government that controls it is so inclined. It seems quite evident that the Russian government has demonstrated the intent to do so. In 1997 Vladimir Putin defended a thesis at the St. Petersburg Mining Institute.<sup>70</sup> In this thesis,

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-BPs-chief-accuses-Russians-of-power-abuse.html. Robert Dudley was the head of TNK-BP, and was subjected to an extensive harassment campaign by the government; inspections were scheduled on short notice when he was going to be gone, including an inspection of Dudley's visa paperwork. *Id.* He was expelled from the country and banned from returning for two years, thus ending his administration of the company; he was removed by the government and not by the corporation itself. *See id.*

<sup>65</sup> Vladimir Soldatkin & Melissa Akin, *BP Wins Russian Court Cases Over TNK-BP*, REUTERS (Nov. 11, 2011), <http://www.reuters.com/article/2011/11/11/us-tnkbp-court-idUSTRE7AA1K720111111>. This looks as if the Russian government was tolerating BP's violations of its contract at the expense of Russian business, as a Russian court dismissed the Russian company's claim against BP. However, it is important to note that the deal against which AAR filed suit was a strategic partnership between BP and state-owned Rosneft. Presumably, a violation of the exclusivity agreement would not have been tolerated if one beneficiary had not been an instrument of the state.

<sup>66</sup> *Rosneft*, FORTUNE MAG., *supra* note 54.

<sup>67</sup> *Gazprom*, FORTUNE MAG., *supra* note 52; *Gazprom Today*, GAZPROM, <http://www.gazprom.com/about/today/> (last visited Mar. 24, 2013).

<sup>68</sup> Paillard, *supra* note 8, at 70.

<sup>69</sup> *Id.*

<sup>70</sup> Harvey Balzer, *Vladimir Putin's Academic Writings and Russian Natural Resource Policy*, PROBLEMS OF POST-COMMUNISM 48 (2006) (a translation with minimal commentary of an article written by Vladimir Putin summarizing the dissertation; the thesis itself is not publicly available). This Note's focus on the philosophy of Vladimir Putin stems from the commonly held assumption that Putin's behavior during his first two terms, the amendments to constitutional term limits passed during his time as Prime Minister, and his return for a third term as President indicate that Putin will lead Russia for much of the foreseeable future. Additionally, it is the opinion of a number of scholars, and the author of this Note, that Putin's beliefs are structurally intertwined with Russia's policy development, an outgrowth of Russia's super-presidential and increasingly centralized

Putin advocated for the use of Russia's natural resources and natural resource companies to execute foreign policy strategies both related and unrelated to the country's energy or financial goals.<sup>71</sup>

According to Putin, the Russian economy would continue to center on natural resources for much of the twenty-first century.<sup>72</sup> He noted that the natural resource industry is a source for much of the country's budget, the "basis for the country's military might," and a source of social stability.<sup>73</sup> He went on to say that privatization created problems for the industry; the state "let strategic management of the natural resource complex slip from its hands," which "resulted in stagnation of the national natural resource potential . . . and a series of other negative consequences."<sup>74</sup>

Putin did not see minimal regulation as the appropriate level of involvement for the state.<sup>75</sup> He intended for the long-term relationship between the state and its natural resources to be long, complex, and close.<sup>76</sup> Ultimately, he sought to create an industry of "national champions," companies that "would put promotion of the state's interest over profit maximization."<sup>77</sup> As discussed below, much of what these "national champions" were employed to do involves exploiting systemic vulnerabilities in the European Union's government and markets to advance Russia's foreign policy interests.<sup>78</sup>

### III. THE BUYERS: CRACKING THE FOUNDATION OF INTEGRATION

Russia's actions over the last decade, and particularly in the last six years, have exposed serious vulnerabilities in the European Union's policies of energy market integration. Since the introduction of the new draft energy policy in 2007, Russia has cut off natural gas supplies to transit countries—non-Union countries through which supply pipelines run to connect European buyers to gas fields in Russia—multiple times.<sup>79</sup>

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government. For more discussion on this topic—which could fill volumes on its own—see PETER BAKER & SUSAN GLASSER, *KREMLIN RISING* (2005).

<sup>71</sup> GOLDMAN, *supra* note 5, at 97–99.

<sup>72</sup> *Id.* at 50.

<sup>73</sup> *Id.* at 51. Social stability is one of the most intriguing factors here; Putin does not explore this at length but notes that the raw materials industry is the sole reason for the existence of a number of cities.

<sup>74</sup> *Id.* at 52.

<sup>75</sup> *Id.* at 53–54.

<sup>76</sup> *Id.*

<sup>77</sup> GOLDMAN, *supra* note 5, at 99.

<sup>78</sup> See discussion *infra* Part III.

<sup>79</sup> See *infra* Part III.A.

In 2008, Russia invaded Georgia.<sup>80</sup> This came in the midst of increased Georgian cooperation with Europe and two years after Georgia, in cooperation with Azerbaijan and Turkey, opened a major non-Russian oil pipeline to Europe.<sup>81</sup> Russia has even shut off direct supplies to Union members and been implicated in influence peddling in Germany and Italy, without consequence.<sup>82</sup>

#### A. *Shut-Offs*

Russia has shut-off gas supplies to non-Union transit countries multiple times over the past six years; these regular shut-offs are highly disruptive not only to the transit countries but to the European Union itself.<sup>83</sup> Pricing disputes between Russia and Belarus have resulted in gas shut-offs to this country alone more than once.<sup>84</sup> Because Belarus is not the terminus of the pipelines Russia threatens to disconnect, downstream countries—and EU members—like Poland, Lithuania, and Germany become secondary victims in many of these disputes.<sup>85</sup>

Ukraine is a more disturbing and consistent victim of these shut-downs. Russia effectively blackmailed the country in 2005 following the Orange Revolution, which ousted Leonid Kuchma, then the pro-Kremlin president of Ukraine.<sup>86</sup> On January 1, 2006, Russia cut gas supplies to the country after Ukraine refused to sign an agreement that would have more than quadrupled the price of natural gas, the primary source of heat for most Ukrainians.<sup>87</sup> The shut-off lasted for four days.<sup>88</sup> Russia did

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<sup>80</sup> Michael Schwirtz et al., *Russia and Georgia Clash over Separatist Region*, N.Y. TIMES (Aug. 8, 2008), <http://www.nytimes.com/2008/08/09/world/europe/09georgia.html?pagewanted=all>.

<sup>81</sup> See Robert O. Freedman, *The Russian Invasion of Georgia—Its Impact on Israel and the Middle East*, 2 CAUCASIAN REV. OF INT'L AFF. 179, 180 (2008).

<sup>82</sup> See *infra* Part III.C.

<sup>83</sup> Andrew E. Kramer, *Russia Threatens Cut in Belarus Gas Supply*, N.Y. TIMES (Aug. 2, 2007), <http://www.nytimes.com/2007/08/02/world/europe/02russia.html>.

<sup>84</sup> *Belarus Blocks Russian Oil Deliveries to Germany, Poland and Ukraine*, N.Y. TIMES (Jan. 8, 2007), <http://www.nytimes.com/2007/01/08/business/worldbusiness/08iht-web.0108oil.4135709.html> (relating the news that Russia increased oil duties, doubled gas prices, and banned sugar imports from Belarus; Belarus responded by shutting down a major Russian export pipeline that runs from Russia to Kaliningrad, Russia's exclave on the Baltic).

<sup>85</sup> Kramer, *supra* note 83.

<sup>86</sup> GOLDMAN, *supra* note 5, at 144–45.

<sup>87</sup> *Russia Cuts Ukraine Gas Supplies*, BBC NEWS (Jan. 1, 2006), <http://news.bbc.co.uk/2/hi/europe/4572712.stm>.

<sup>88</sup> Miriam Elder, *New Year's Tradition: Behind the Russia-Ukraine Gas Conflict*, DER SPIEGEL (Jan. 5, 2009), <http://www.spiegel.de/international/business/0,1518,599571,00.html>.

the same thing in 2009; while running anti-Ukrainian political ads in Russia, Gazprom sought to alleviate some of its debt problems by hiking prices in its gas contracts with Ukraine.<sup>89</sup>

Shut-offs that target Ukraine are particularly disruptive to the European Union.<sup>90</sup> Gas routed through Ukraine flows to the TransGas Pipeline, which leads to Slovakia, the Czech Republic, Austria, Germany, and Italy.<sup>91</sup> A full eighty percent of the natural gas that the European Union imports from Russia flows through Ukraine,<sup>92</sup> which amounts to about one-quarter of the Union's total supply.<sup>93</sup>

Russia has also shut down direct supply lines to European Union member states.<sup>94</sup> In 2006, Russia closed the taps on the northern branch of the Druzhba pipeline after Lithuania privatized a major refinery by selling it to a Polish company.<sup>95</sup> This action pre-empted a Russian competitor that was attempting to purchase the refinery from Lithuania.<sup>96</sup> Many observers believed that the decision to close Druzhba was a punitive action against both Lithuania and Poland.<sup>97</sup> Ultimately, the Druzhba pipeline was reopened after heavily one-sided negotiations.<sup>98</sup> There were no consequences to Moscow for its mineral muscle flexing; the absence of any coherent European Union energy security strategy, or "united voice," was belied by the incoherence of the member states' positions after the matter was concluded.<sup>99</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> Paillard, *supra* note 8, at 68.

<sup>91</sup> *See id.*

<sup>92</sup> Elder, *supra* note 88.

<sup>93</sup> *See* Paillard, *supra* note 8 and accompanying text.

<sup>94</sup> *See* Vladimir Socor, *Russian Oil Pipeline Shutoff to Lithuania: Wider Ramifications*, EURASIA DAILY MONITOR, June 6, 2007, available at [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=32789](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=32789).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *See, e.g., id.* Some oil from the Druzhba pipeline ultimately makes its way on to Poland. As Socor notes in his article, "Lithuanian and Polish refineries [could] still receive Russian crude oil from Primorsk [a port near St. Petersburg]" but "the transport by tanker adds to the price of crude, cuts into refineries' income and profit margins, affects their share values, and reduces their tax contributions to state budgets." *Id.*

<sup>98</sup> *See The Baltic Pipeline System: The Key Federal Project in the Leningrad Region*, LENINGRAD REGION, <http://eng.lenobl.ru/economics/investment/principlefederalprojects/balticoilpipeline> (last visited Mar. 24, 2013) (demonstrating that the Baltic Pipeline System II—a new branch of Druzhba fed by the main line—is a going concern, showing that Druzhba is still operating).

<sup>99</sup> *Cf.* Peter Spiegel, *Putin Set to Resume Battle with Barroso*, FINANCIAL TIMES (Feb. 23, 2011), <http://www.ft.com/intl/cms/s/0/34042dd6-3f7f-11e0-a1ba-00144feabdc0.html#axzz1nu4m4PtE>. The article explains some history of the frustrations of EU

*B. Invasion*

In early August 2008, Russian forces moved into the Georgian region of South Ossetia under the guise of protecting an ethnic Russian minority in that area.<sup>100</sup> Georgia resisted the invasion, launching a counterattack on the Ossetian town of Tskhinvali.<sup>101</sup> The counterattack was stopped, and the Russian military responded by driving far into Georgia, cutting off the primary east-west road in the country and stopping their invasion just short of the capital city of Tbilisi.<sup>102</sup> A cease-fire was brokered five days after the conflict broke out.<sup>103</sup>

The conflict had a number of root causes, but control over oil and gas distributions seems to have been a strong motivating factor for Russia. Tensions briefly erupted in 2003 because Russia felt Georgia's developing connections with the West—including Georgia's interest in NATO membership—were viewed as a violation of what Russia considered to be a privileged zone in her “near abroad,” a term used to describe former USSR and Warsaw Pact members that border the Russian Federation.<sup>104</sup> The invasion in 2008 came less than three years after the conclusion of the Baku-Tbilisi-Ceyhan Pipeline (“BTC Pipeline”), one of the only major pipelines from Central Asia to Europe not controlled by a Russian company.<sup>105</sup> Some infrastructure supporting the Georgian section of the BTC Pipeline came under attack during the war, and just two days before Russia invaded the pipeline was bombed by a Kurdish terrorist organization in Turkey.<sup>106</sup> Additionally, the war itself prompted concerns in Azerbaijan and other parts of central Asia about the wisdom of involvement in any oil transit pipeline that bypassed Russia completely.<sup>107</sup> It seems highly

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President Jose Manuel Barroso in dealing with Putin's Kremlin, and illustrates the failure of any stern words to have any impact on Russia's actions. *Id.*

<sup>100</sup> LAW LIBRARY OF CONGRESS, RUSSIAN FEDERATION: LEGAL ASPECTS OF WAR IN GEORGIA, EXECUTIVE SUMMARY, 9–11 (2008), available at <http://www.loc.gov/law/help/russian-georgia-war.pdf>.

<sup>101</sup> INDEPENDENT INTERNATIONAL FACT FINDING MISSION ON THE CONFLICT IN GEORGIA REPORT 10 (2009), available at [http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/30\\_09\\_09\\_iiffmgc\\_report.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/30_09_09_iiffmgc_report.pdf).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 11.

<sup>104</sup> *Id.* at 14.

<sup>105</sup> See Freedman, *supra* note 81, at 180.

<sup>106</sup> Nihat Ali Ozcan, *Energy Security and the PKK Threat to the Baku-Tbilisi-Ceyhan Pipeline*, 6 TERRORISM MONITOR 18 (2008), available at [http://www.jamestown.org/programs/gta/single/?tx\\_ttnews%5Btt\\_news%5D=5170&tx\\_ttnews%5BbackPid%5D=167&no\\_cache=1](http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=5170&tx_ttnews%5BbackPid%5D=167&no_cache=1).

<sup>107</sup> *Id.*



probable that the war was motivated not by concern for “disadvantaged Russian minorities,” which exist in many countries neighboring Russia, but by disdain for the bypass project and for continued European involvement in Russia’s “near abroad.”<sup>108</sup>

### C. *Influence Peddling*

While Russia—and indeed any energy supplier—has a great deal of political influence with the governments of consumer countries, perhaps nowhere has the extent of the Kremlin’s reach been so starkly illustrated as in Berlin. When he was inaugurated Chancellor in 1998, Gerhard Schroeder promised to phase nuclear power out of Germany’s energy portfolio.<sup>109</sup> At this point, nuclear power provided about one-third of Germany’s electricity.<sup>110</sup> During his time in office, Schroeder advocated strongly for a pipeline agreement with a company called Nord Stream AG, a Russian-operated natural gas pipeline designed to replace nuclear energy as a primary energy source and to guarantee the security of Germany’s energy supply.<sup>111</sup> Immediately after leaving office in 2005, Schroeder was named Chairman of Nord Stream, a position he still occupies.<sup>112</sup> While the European Union has launched multiple ethics investigations against Mr. Schroeder, no additional proceedings have been pursued.<sup>113</sup>

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<sup>108</sup> JIM NICHOL, CONG. RESEARCH SERV., RL34618, RUSSIA-GEORGIA CONFLICT IN AUGUST 2008: CONTEXT AND IMPLICATIONS FOR U.S. INTERESTS 12–13, 21 (2008), available at <http://www.fas.org/sgp/crs/row/RL34618.pdf>; see also Svetlana Skarbo & Jonathan Petre, *The Pipeline War: Russian Bear Goes for West’s Jugular*, DAILY MAIL (Aug. 10, 2008), <http://www.dailymail.co.uk/news/article-1043185/The-Pipeline-War-Russian-bear-goes-West-s-jugular.html>; Jad Mouawad, *Conflict in Georgia Narrows Oil Options for West*, N.Y. TIMES (Aug. 14, 2008), <http://www.nytimes.com/2008/08/14/world/europe/14iht-14oil.15268305.html?pagewanted=all>.

<sup>109</sup> *Germany to Phase Out Nuclear Energy—Schroeder*, BBC NEWS (Nov. 10, 1998, 8:53 PM), <http://news.bbc.co.uk/2/hi/world/monitoring/211911.stm>.

<sup>110</sup> NUCLEAR SAFETY IN GERMANY: REPORT UNDER THE CONVENTION ON NUCLEAR SAFETY BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FOR THE FIRST REVIEW MEETING IN APRIL 1999, 7 (1999), available at [http://www.bfs.de/www/kerntechnik/CNS\\_99\\_E.pdf](http://www.bfs.de/www/kerntechnik/CNS_99_E.pdf).

<sup>111</sup> See Editorial, *Gerhard Schroeder’s Sellout*, WASH. POST, Dec. 13, 2005, at A26, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/12/AR2005121201060.html>.

<sup>112</sup> *Our Management*, NORD STREAM AG (2011), <http://www.nord-stream.com/our-company/management.html> (last visited Mar. 24, 2013).

<sup>113</sup> Tobias Buck & Bertrand Benoit, *EU to Probe German Gas Pipeline Guarantee*, FINANCIAL TIMES (May 8, 2006), <http://www.ft.com/intl/cms/s/0/4b16eef6-deb2-11da-acee-0000779e2340.html#axzz1afWdCm3v>.



D. *The Consequences*

The clear implication is that the “united front” of Europe’s energy trade with outside suppliers is in fact riddled with massive gaps. These gaps are easily and effectively entered and exploited by outside suppliers like Russia. The ultimate consequence is not just that Europe is unable to “speak with one voice” in the international energy market; the Union has virtually lost control of its internal and external energy trade. In some cases examined above, the Union and its members have even found domestic policy to be under the sway of supplier countries.

The consequences are not just political. Russia’s ability to exert such serious political pressure on the European Union also limits the Union’s ability to control Europe’s physical environment. For example, the Nord Stream pipeline runs through the Baltic Sea, one of the world’s most polluted oceans.<sup>114</sup> The bottom of the Baltic Sea was littered with barrels of mercury, World War II–era naval mines, “the entire chemical arsenal of Nazi Germany,” and surplus chemical weapons from a number of other participants in the war.<sup>115</sup> Despite the fact that many of the littoral nations were EU members, the European Union itself had little to do with the environmental discussion about the future of the pipeline.<sup>116</sup> The main deal was signed between Germany and Russia and subsequent demands for environmental impact assessments came not from the European Union itself but from individual nations like Lithuania, Estonia, and Finland.<sup>117</sup> The Union’s silence and the division of opinion between Germany and the other Baltic nations is a clear implication that the diversity of interests in the Union—some of which was driven by supplier countries like Russia—has hindered progress toward centralized control of the European energy market by the European Union. While no catastrophic mercury leaks have yet occurred in the Baltics to provide critics

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<sup>114</sup> Charles Hawley, *Europe’s Underwater Chemical Dump: Tons of Mercury Found in the Baltic Sea*, DER SPEIGEL, Aug. 30, 2006, available at <http://www.spiegel.de/international/0,1518,434329,00.html>.

<sup>115</sup> *Id.*

<sup>116</sup> See Vladimir Socor, *Baltic Seabed Gas Pipeline Project: Far from a Done Deal*, EURASIA DAILY MONITOR, May 22, 2007, available at [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Bwords%5D=8fd5893941d69d0be3f378576261ae3e&tx\\_ttnews%5Bany\\_of\\_the\\_words%5D=nordstream&tx\\_ttnews%5Btt\\_news%5D=32757&tx\\_ttnews%5BbackPid%5D=7&cHash=31a0fbf0ebd3f7239cdd1b569437c39b](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Bwords%5D=8fd5893941d69d0be3f378576261ae3e&tx_ttnews%5Bany_of_the_words%5D=nordstream&tx_ttnews%5Btt_news%5D=32757&tx_ttnews%5BbackPid%5D=7&cHash=31a0fbf0ebd3f7239cdd1b569437c39b).

<sup>117</sup> See *id.*; *Finland Tells Nord Stream to Study Alternative Routes*, REUTERS (Jan. 21, 2008), <http://uk.reuters.com/article/2008/01/21/environment-finland-nordstream-dc-idUKL2150308920080121>.

an “I told you so” moment, the fact remains that the European Union has little weight with which it can push back against supplier countries in cases like that of the new Nord Stream pipeline.

Such a position is quite clearly both precarious and unsustainable, especially for a Union whose very foundation rests on principles of supranational sovereignty and the strength of a multinational economy. Circumstances demand that the Union take quick action to seal the gaps and strengthen the integrated market.

#### IV. THE FUTURE: CREATING A STRONG, PERMANENT PLAN FOR THE COMING YEARS

As discussed previously, the energy market in Europe is currently governed by the terms of the Energy Charter Treaty.<sup>118</sup> We have already seen the vulnerabilities in Europe’s energy security situation. This section aims primarily to address some of the flaws in the ECT that Russia’s actions expose, and then explain the best way to remedy these defects.

##### A. *Flaws*

One of the primary flaws in the treaty is in the philosophy underlying its structure. Konoplyanik and Walde suggest that the development of a free energy market encourages interdependence, which in turn protects energy security because interdependent countries will try to avoid the disruptions that are the inevitable result of trade disputes.<sup>119</sup> The authors—and the drafters of the ECT—fail to recognize that interdependence is only even potentially functional between similarly situated parties, and even then may not prevent disruptions.<sup>120</sup> Russia so far outbalances any individual EU member that the consequences to Russia of a service disruption are minimal, even if the consequences to the member state are significant.<sup>121</sup> To put it another way, that the European Union members are all part of one Treaty does not mean each speaks with one voice. Given that this treaty has been signed by countries all over the world,

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<sup>118</sup> See *supra* Part I.A.

<sup>119</sup> See *supra* notes 20–21 and accompanying text; see also NORMAN ANGELL, *THE GREAT ILLUSION* (1909). Published just before WWI, Angell argued that wars between European powers were futile and obsolete because of the integration and liberalization of the European economy.

<sup>120</sup> See ANGELL, *supra* note 119.

<sup>121</sup> See *supra* Part III.A.

the security interests of Poland and France are no more mutually reinforced by this treaty than are the interests of Japan and Moldova.

Another problem with the Treaty is the way it treats signatory states and its ability to compel actions by different states. There is no distinction between supplier countries and consumer countries.<sup>122</sup> Furthermore, the fact that the Treaty focuses so intently on liberalization means that it does not carry with it enforcement mechanisms; there are no incentives for good behavior or punishments for bad actions.<sup>123</sup> The Treaty does not seek to intervene in energy security beyond expressing common principles on the topic.<sup>124</sup> It does not “provide any particular effect method to compel countries which are not interested in developing [good governance through rule of law] nor does it, or can it, compel energy flows between reluctant suppliers or consumers.”<sup>125</sup> In short, if interdependence does not stop Russia's intransigence—and, as we have seen, it certainly has not—there is no enforcement mechanism in the Treaty with which to seek an alternative remedy because the ECT exists to *liberalize* the energy trade, not to guarantee its safety, supply security, or price consistency.

### B. *Fixes*

There are a number of potential fixes to the weaknesses in Europe's current energy strategy—or lack thereof. The most important thing for *any* new plan, however, is to centralize the formation of policy and the negotiation of all European energy deals under the purview of the European government. Additional possibilities include new ethics rules, and an expansion of currently existing plans to develop alternative energy sources, which would decrease dependence on external suppliers. This section details an itemized list of important policy suggestions.

*Create an office or agency that handles the creation of energy policy for the entire European Union.* Europe's countries recognized the difficulties of disunited monetary policy and attempted to solve them by sacrificing control to the central government and the European Central Bank.<sup>126</sup> They can certainly do the same with energy policy if it is indeed more beneficial

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<sup>122</sup> See generally ENERGY CHARTER TREATY, *supra* note 16.

<sup>123</sup> See Konoplyanik & Walde, *supra* note 1, at 531.

<sup>124</sup> See generally ENERGY CHARTER TREATY, *supra* note 16.

<sup>125</sup> Konoplyanik & Walde, *supra* note 1, at 532.

<sup>126</sup> Nathan Lewis, *What Is the Purpose of the Euro?*, FORBES (May 13, 2011), available at <http://www.forbes.com/2011/05/12/euro-currency-purpose.html>.

to act as one voice. European leaders and thinkers certainly believe it is,<sup>127</sup> and the events of the past few years firmly support that conclusion.<sup>128</sup>

*Bar EU member states from making independent deals with outside suppliers.* This would be a relatively simple solution to one of the primary issues with the current regime: Russia's ability to divide the European Union along lines of differing member state interests and establish Russia's desired policy with relative ease. Again, while individual states would be barred from acting independently to make deals with external supplier countries, the Union-level agency described above would be tasked with making uniform policies for the entire community.

The new policy can be enacted by the European Union under the doctrine of supremacy, which states that Union member states must set aside domestic law—even executive prerogatives granted under the constitution of the member state—when it conflicts with a treaty or law of the European Union.<sup>129</sup> This policy would work hand-in-hand with the centralized agency proposal listed above—no country would be authorized to circumvent the policies lawfully entered by the central government.

Both policies are necessary. The first allows the European Union to *actually* speak with one voice in the field of energy, and to know that any policy enacted will carry with it the full weight of the Union economy, an effective counterbalance on Russian muscle flexing. The second prevents Russia from pursuing divide-and-conquer strategies by ensuring that any agreements procured with a member state by doing an end run around the central energy agency would be invalidated.

Recognizing that many EU members chafe at sacrificing any sovereign authority to the Union,<sup>130</sup> a more politically palatable option could conceivably be a pairing of a central energy agency with a purely advisory function with a European Commission veto over deals entered into by individual member nations. That way, member nations preserve their ability and right to freely enter agreements with external supply nations and to tend to their own interests, and the Union retains the power to

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<sup>127</sup> See generally Voutilainen, *supra* note 2; Delors, *supra* note 25.

<sup>128</sup> See *supra* Part II.

<sup>129</sup> See, e.g., Declaration Concerning Primacy, Treaty of Lisbon Amending the Treaty on the European Union and the Treaty Establishing the European Communities, Dec. 13, 2007, 2007 O.J. (C 306) 256; case 6/64 Flaminio Costa v. ENEL, 19640 E.C.R. 585 (1964); *Solange II (Re Wuensche Handelsgesellschaft)*, Bundesverfassungsgericht [Federal Constitutional Court] [BverfGE] Oct. 22, 1986, 3 CMLR 225, 265 (Ger.).

<sup>130</sup> See, e.g., *EU Constitution: Where Member States Stand*, BBC NEWS (Mar. 25, 2007, 1:21 PM), <http://news.bbc.co.uk/2/hi/europe/3954327.stm> (demonstrating the wide diversity of opinion on the EU Constitution, a measure intended to further centralize authority in the European central government).

void any agreements that violate the principles of policy that the central energy administration formulates.

*Establish new ethics rules for former member state officials.*

Obviously the most notable case calling for such a rule is that of Gerhard Schroeder. There was no meaningful obstacle at either the European Union level or the German level to prevent him from joining the board of directors of a company that had a major influence on his administration. Legislation should be enacted by the EU government that bars former member state executives and cabinet ministers from representing or working for parties that were involved in matters that were of substantial importance during the administration of those officials.

The United States, in working to eliminate the “revolving door” between Congress and private lobbying firms, provides a decent legislative model. Two relevant provisions from American conflict of interest law provide for:

(1) a lifetime ban on “switching sides,” that is, representing a private party on the same “particular matter” involving identified parties on which the former executive branch employee had worked personally and substantially for the government; (2) a two-year ban on “switching sides” on a somewhat broader range of matters which were under the employee’s official responsibility.<sup>131</sup>

Such rules would be greatly beneficial to the European Union; the lifetime ban would have prevented Schroeder from ever working for Nord Stream after he left office and thus may have shielded Germany from outside influence in domestic energy policy-making.

*Expand funding for existing alternative energy research and innovation programs.* As mentioned above, the Union has established a number of programs and legislative directives to develop new sources of alternative energy in the European Union.<sup>132</sup> These programs are designed both to foster energy independence—which helps to guarantee the security of Europe’s energy supply—and to reduce Europe’s emissions pursuant to the Union’s 2020 Energy and Climate Change goals.<sup>133</sup>

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<sup>131</sup> JACK MASKELL, CONG. RESEARCH SERV., 97-875, POST-EMPLOYMENT, “REVOLVING DOOR,” LAWS FOR FEDERAL PERSONNEL at Summary (2010), <http://www.fas.org/sgp/crs/misc/97-875.pdf>; see also 18 U.S.C. § 207 (2012).

<sup>132</sup> *Supra* note 17.

<sup>133</sup> *Europe 2020 Targets*, EUROPEAN COMMISSION (Jan. 20, 2012), [http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index_en.htm). The Union’s climate and

Legislative action by the European central government has proved an effective tool in developing renewable energy throughout the European Union. In 2001, the Union implemented a “directive on electricity product[ion] from renewable energy sources.”<sup>134</sup> The purpose of the act is simply to encourage the development of renewable electricity generation and “create a basis for a *future* Community framework thereof.”<sup>135</sup> The Directive requires the Commission—not an independent agency—to establish national goals for each EU member state.<sup>136</sup> The overall goal set by the directive was an increase in market share for renewables to 21% of energy consumption across the entire Union.<sup>137</sup> By 2009, the Union had already increased the share of renewables to 19.9%, demonstrating the success the Union has had with implementing change through legislative action.<sup>138</sup> This type of central government goal-setting could also be extremely helpful when solving the problem of foreign involvement in member countries’ domestic policy formation.

Research encouragement policies have been somewhat less successful, despite their utility in demonstrating the ambitions of the Union as a whole. The Strategic Energy Technologies (“SET”) plan is one of the Union’s leading innovation programs in the area of alternative energy; the Union refers to it as “the technology pillar of the European Union’s energy and climate policy.”<sup>139</sup> The plan has four goals:

- Accelerating knowledge development, technology transfer and up-take;
- Maintaining EU industrial leadership on low-carbon energy technologies;
- Fostering science for transforming energy technologies to achieve the 2020 Energy and Climate Change goals;
- Contributing to the worldwide transition to a low carbon economy by 2050.<sup>140</sup>

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energy targets by 2020 are to reduce greenhouse gas emissions by twenty to thirty percent, increase the market share of renewable energy sources to twenty percent, and increase the Union’s “energy efficiency” by twenty percent. *Id.*

<sup>134</sup> Directive 2001/77/EC, *supra* note 17, at 33.

<sup>135</sup> *Id.* at 35 (emphasis added).

<sup>136</sup> *Id.*

<sup>137</sup> EU ENERGY POLICY TO 2050, *supra* note 17, at 15.

<sup>138</sup> *Id.*

<sup>139</sup> *What Is the SET-Plan?*, *supra* note 17.

<sup>140</sup> *Id.*



The plan also has a projected budget of nearly 71.5 billion Euro.<sup>141</sup> While the goals of the plan are clearly very lofty and are in keeping—whether intentionally or not—with the pursuit of energy security, a recent task force report by the Centre for European Policy Studies suggests that the program has gone little farther than demonstrating its ambitions.<sup>142</sup> In particular, the report notes that “an efficient and truly competitive integrated EU energy market, the necessary grid infrastructure and accompanying cross-border regulation . . . will provide market pull for low-carbon technologies.”<sup>143</sup> The report states optimistically that the Plan “has the potential to accelerate the rate of innovation” with EU support.<sup>144</sup> It also suggests however that the Plan has not yet done so and will not be able to without more active leadership by the European Commission.<sup>145</sup>

## V. POTENTIAL OBSTACLES

There are two major obstacles that exist to the implementation of the above proposals, and this Note will address each individually. First, Russia will rightly be uncomfortable with the development of alternative and renewable energy sources. Second, and most importantly, the European Union is currently immersed in an acute and potentially existential economic and financial crisis.

*Russia's fear of alternative and renewable energy.* Any increase in the market share for renewables and domestic energy will necessarily diminish Russia's piece of the pie; it seems unlikely that Russia will be pleased with the weakening of one of its main foreign policy levers.<sup>146</sup> Additionally, it may be difficult for Russia to believe that Europe's diversification of supply is not an expression of Europe's fears or worries about the Russian Federation.

The perception that the European Union still fears Russia could cast a negative pall over relations with the Federation. Reaching out to Russia to develop a cooperative renewables investment strategy could be a useful way around this. Russia has ratified the Kyoto Protocol and has

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<sup>141</sup> *Id.*

<sup>142</sup> See generally THE SET-PLAN: FROM CONCEPT TO SUCCESSFUL IMPLEMENTATION, CENTRE FOR EUROPEAN POLICY STUDIES (Lars Erik Liljelund et al., eds. 2011), available at <http://www.ceps.eu/ceps/dld/5531/pdf>.

<sup>143</sup> *Id.* at 2.

<sup>144</sup> *Id.* at 3.

<sup>145</sup> *Id.*

<sup>146</sup> See *supra* note 62 and accompanying text.



actually exceeded its greenhouse gas emissions reduction goals.<sup>147</sup> While the reasons for this success may be debated, Russia has clearly demonstrated at least some minimal level of commitment to environmental protection and may be a willing participant in a cooperative alternative energy program, particularly if some financial benefit could be recognized that would offset any losses from its diminished fossil fuel market share.

*The European Union is in crisis.* This is by far the most significant obstacle to the creation of any coherent common energy policy in the European Union. The International Monetary Fund refused to fund any additional bailout measures for sovereign debt relief in the Eurozone, and the head of that organization stated that the Eurozone crisis is currently “the biggest source of global instability.”<sup>148</sup> A number of observers have speculated that the sovereign debt crisis may ultimately result in the demise of the Euro as a viable currency.<sup>149</sup> Additionally, unemployment in the Eurozone stands at a record high of twelve percent as of December 2012, including 26.2% unemployment in Spain.<sup>150</sup> With such existential economic threats on the horizon, it seems clear that Europe will likely see issues like this one as back-burner topics. However, the “end of the Eurozone” is at this point nothing more than a hypothesis. Indeed, it may be helpful to focus energies on the development of renewables; such a project could rejuvenate the European economy.

## CONCLUSION

Russia's energy industry is a coherently organized behemoth working hand-in-hand with the Russian state. As mentioned earlier, Russia's energy companies are among the largest companies of *any* sort in the entire world. Four of the five largest of these regularly cooperate

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<sup>147</sup> UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2007/2008—FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 22, available at [http://hdr.undp.org/en/reports/global/hdr2007-8/papers/Perelet\\_Renat\\_Pegov\\_Yulkin.pdf](http://hdr.undp.org/en/reports/global/hdr2007-8/papers/Perelet_Renat_Pegov_Yulkin.pdf).

<sup>148</sup> *George Osborne: No More IMF Money for Eurozone*, THE GUARDIAN (Feb. 26, 2012, 6:36 AM), <http://www.guardian.co.uk/politics/2012/feb/26/george-osborne-no-imf-eurozone>.

<sup>149</sup> Tony Barber & Daniel Dombey, *Businesses Plan for Possible End of Euro*, FINANCIAL TIMES (Nov. 29, 2011, 9:32 PM), <http://www.ft.com/cms/s/0/25ab975a-1a9f-11e1-ae14-00144feabdc0.html#axzz213qSPa2C>; *Is This Really the End?*, THE ECONOMIST, Nov. 26, 2011, available at <http://www.economist.com/node/21540255>.

<sup>150</sup> Josephine Moulds, *Eurozone Won't Begin Recovery Until Late 2013*, Mario Draghi Says, THE GUARDIAN (Nov. 30, 2012), <http://www.guardian.co.uk/business/2012/nov/30/eurozone-unemployment-record-high>.

with the Kremlin, and the last has in the past been the target of a state-managed harassment campaign.<sup>151</sup> Vladimir Putin has written on the importance of the mineral natural resource companies to the national economy and indeed to the national culture; his “national champions” philosophy considers the industry to be an important point of leverage in international and domestic relations.

Europe's energy market is clearly divided in its dealings with supplier countries, despite past attempts at integration in the market. There was a stark divide in the Continent's response to the Nord Stream pipeline; a number of Baltic countries were against it even as Germany agreed to it. The response of Union members to the invasion of Georgia was even more varied, ranging from conciliatory to averse to silent. The unity of the Russian energy industry in its policy decision-making has driven a wedge between Union members that have become used to making unilateral policy decisions. The success of this divide-and-conquer strategy has become a significant obstacle to the integration of the European market.

Russia's interactions with Europe and countries of geopolitical interest to Europe demonstrate the serious shortcomings of the current policy, or lack thereof. As we have seen, Gerhard Schroeder was allowed to gut the German nuclear energy industry without consequence. The Union stood by and allowed member states to force the issue on environmental assessments in the Baltic states. No action was taken against Russia for gas shut-offs to transit countries; indeed, the Voutilainen article discussed above suggests that the only thing to do about these shut-offs is to assemble a gas reserve and an “early warning system” to mitigate the effects of such incidents, rather than prevent them from happening. Europe has gone so far as to announce the existence of a problem, but there is a gaping void in policy that desperately needs to be filled.

There is, however, hope for the future of the European Union's energy policy in the pursuit of a handful of goals. These goals are meant to be suggestive, not necessarily prescriptive. The primary goal of the proposals included in this Note is to highlight the need for an *integrated* and *mutually accountable* mineral purchase apparatus.

The Union must, as has been previously suggested, increase solidarity between member countries. The European Union can achieve this by increasing the accountability of each member to the others and to the government of the European Union as a whole. This type of accountability

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<sup>151</sup> See *supra* notes 59–61 and accompanying text.

would require individual states to surrender more sovereignty to the supranational government.

To avoid another Schroeder situation, any new policy also requires provisions governing internal markets, including but certainly not limited to new ethics rules for former governing officials. The European Union should also establish a government body to deal with external suppliers, or expand the role of an existing body like the European Council to include these duties. One of the clearest failures of the European Union is its inability to speak with a "united voice." Centralizing that responsibility would do much to create that voice.

The Union could develop a common fund for the development of alternative energy sources; the resulting pool of capital would be greater than any member state could achieve on its own and the diminished reliance on foreign suppliers would help insure against interference from outside. Finally, an alternative; a common scheme of environmental regulations and a body to enforce them—an "EU EPA"—that could supersede independent treaties that run contrary to Union interests under the doctrine of primacy, or it could guide energy trade agreements by the European Union or the member states.

Clearly, this Note would be exceedingly starry-eyed if it failed to acknowledge the existence of major impediments to success, most of which should be fairly familiar to European observers. The status quo in Europe has for years been the sovereign right of member nations to negotiate and conclude their own energy agreements. The mere fact that the European Union has even come so far in terms of the transfer of sovereignty is almost a miracle; the concerns surrounding this issue make every extra step toward centralization a chore for the Union.

The crisis in the Eurozone is a far more serious obstacle. At least one Union member faces default, and a number of observers have suggested the possibility that the Euro's days as a uniform currency for the Continent are limited. Without the Euro, the future of the European Union is at stake. Facing such an existential threat, it seems unlikely that the European Union will address more tactical issues like this one in the immediate future.

Ultimately, these limitations should not matter. The European Union needs to do something. Supplier countries speak with one voice; OPEC has central price-setting mechanisms, and even privately held energy companies in Russia make decisions in tandem with state-owned companies and the government. Because of that, these suppliers have the upper hand in negotiations with Europe. The costs of inaction to the

Union as a whole—in terms of environmental control, continental security, energy pricing, and even the mere harm to the credibility of the European Union as a governing body, for example—far outweigh the costs of action to any individual member nation. Additionally, allowing external energy suppliers to divide the Union along policy lines at a time when European unity itself is at stake is negligent at best. Accordingly, the government of the European Union should further centralize power in the energy arena and negotiate more robustly with suppliers in the stead of individual member governments.