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# From a liberal to a strategic actor: the evolution of the EU's approach to international energy governance

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## ABSTRACT

Most scholars have described the European Union (EU) as a liberal actor in its approach to international climate and energy governance. This paper argues that the EU has shifted to a strategic approach, including the use of legislation and the adoption of negotiating positions that promote a political agenda. This is illustrated through an analysis of the EU's evolving stance on multilateral energy governance and its handling of the Nord Stream 2 project. The EU began to shift towards a strategic stance already in the 2000s, in the context of the Energy Charter Treaty negotiations and the growing securitization of European energy debates. Following the polycrisis of the mid-2010s, the EU adopted a full-fledged strategic stance on external energy policy. Geopolitical crises and great power competition, together with intra-EU divisions and an increased focus on the climate agenda, have catalyzed the EU's shift to a strategic approach.

**KEYWORDS** Energy Charter Treaty; energy policy; European Union; governance; multilateralism; Nord Stream 2

## Introduction

International climate and energy governance (CEG) has long been a core interest of the European Union's (EU) external action, reflecting the Union's aspiration to play a prominent role in the regulation of energy markets and in climate policy. The EU has been one of the main promoters of the global climate agenda since the 1990s. It played a pivotal role in the adoption of the main multilateral climate treaties, from the Kyoto Protocol to the Paris agreement (Oberthür & Dupont, 2021). Moreover, it has attempted to shape the functioning of European and global energy markets through the

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support of legal instruments such as the Energy Charter Treaty (ECT), a multilateral CEG framework established in the 1990s.

The EU's activeness in climate and energy policy has spurred extensive scholarly interest. One of the main debates has focused on conceptualizing the EU's evolving actorness in international CEG. EU policy makers have long claimed that a market approach and liberal norms constitute the core of the Union's external energy policy (cf. McGowan, 2008, pp. 92–94). Beginning in the late 2000s, some scholars began to question this understanding and showed that European energy debates were increasingly securitized, largely due to the growing perception of Russia as a geopolitical competitor in the wake of the 2006 and 2009 Ukrainian transit crises (McGowan, 2008; Natorski & Herranz Surrallés, 2008). Nonetheless, they argued that a liberal market approach continued to shape the EU's external energy policy, and that securitizing trends were mostly due to the initiatives of member states and external actors. It was only in the mid-2010s, following the polycrisis and geopolitical shifts discussed by von Homeyer et al. (2021), that some scholars began to tentatively reconceptualise the EU as a strategic actor in international CEG (see for instance Boersma & Goldthau, 2017).

Departing from these observations, this article argues that the EU has largely abandoned a liberal approach in external energy policy and is best conceptualized as a strategic actor. It shows that the EU began to adopt a strategic stance already in the 2000s, in the context of the ECT negotiations, even while this posture was framed and presented as the promotion of a liberal market model. The EU began to isolate its norms from important aspects of the multilateral CEG regime, which were perceived as constraining the Union in the pursuit of its goals. It also exported its market model and legal *acquis* to neighbouring states, thereby establishing an 'EU-fits-all' approach through which it defined norms unilaterally. The polycrisis of the mid-2010s accelerated the EU's shift to a full-fledged strategic stance in its external energy policy. This is shown through an analysis of the Union's treatment of the Nord Stream 2 project.

The growing prominence of the climate agenda also contributed to the EU's shift to a strategic approach. Investment protection mechanisms such as those enshrined in the ECT and bilateral investment treaties are increasingly seen as protecting investments in the fossil fuel industry and thus as a factor constraining EU governance capacity in climate policy (cf. Tienhaara & Downie, 2018). This has motivated ongoing attempts by the EU to reclaim the sovereignty that it had transferred to multilateral governance frameworks in the 1990s (Simon, 2019).

Hence, the article contributes to the ongoing scholarly debate by critically reviewing past literature and by reconceptualising the EU's actorness in CEG. While recent analyses maintained that the EU and its member states were divided between a liberal and strategic approach to CEG (Goldthau & Sitter,

2019, 2020), this article argues that the EU (together with a majority of member states) has decisively shifted towards a strategic approach in its external energy policy. Based on recent empirical evidence from the Nord Stream 2 case, the analysis shows that the EU has also used internal market legislation to sustain this stance. In turn, the EU's adoption of a strategic approach has further contributed to the trend of growing geopolitical confrontation.

A strategic actor is defined as one using various forms of power that are available in its toolkit for the pursuit of (geo)political goals. This includes the use of regulatory<sup>1</sup> and economic power (Goldthau & Sitter, 2020, p. 113; Siddi, 2019a, p. 125). In CEG, a strategic actor tends to focus on the pursuit of a political agenda, even if this involves 'sacrificing' market or liberal principles. It often relies on arguments focusing on security in order to advance this agenda, which leads to the securitization of the debate. For instance, constraining or reducing energy imports from Russia for political goals (weakening Putin's regime or showing solidarity to Ukraine), regardless of their economic competitiveness, epitomizes a strategic approach to external energy policy. In a strategic approach to CEG, optimum market outcomes and economic calculations are subordinated to the political agenda. For example, a strategic actor can support diplomatically and financially the construction of a pipeline that has limited economic rationale because it sees the project as advancing its geopolitical interests. The EU's diplomatic, political and financial support of the Southern Gas Corridor provides an apt example of this approach (Siddi, 2019a). Hence, a strategic stance on CEG is clearly distinct from a liberal market approach, which focuses on ensuring the functioning of commodity markets, without overarching political goals. A liberal actor is defined as 'interpreting issues primarily in terms of trade rather than geopolitics, and employing policy tools designed to build and maintain open markets' (Goldthau & Sitter, 2014, p. 1454) within an international regulatory framework agreed upon at multilateral level.

A strategy can be pursued through different means, from diplomacy and regulatory means to the use of military coercion. Especially in a large and deeply regulated energy market such as the EU, the introduction of obstructing legislation and *ad hoc* rules or clauses can be seen as means to achieve a political strategy. The article conducts a process tracing analysis of the EU's use of these means in the context of ECT negotiations and the Nord Stream 2 project. Process tracing exposes the causal mechanisms leading to a certain outcome in their chronological development (Collier, 2011). Our investigation traces the development of the EU's position in relevant multilateral frameworks (notably the ECT), as well as the Union's adoption of key legislation that shapes the EU's stance on CEG (such as the Gas Directive). Inference is generated from the analysis of legal documents (the ECT, the Transit Protocol, the EU's 2019 Gas Directive Amendment, a relevant WTO ruling) and is corroborated by other scholarly works and press analyses.

The article begins by critically reviewing scholarly literature on EU actorness in international CEG. In doing so, it analyses how scholars assessed the increasing securitization of EU energy debates in the 2000s and during the polycrisis of the 2010s. The post-2013 Ukraine crisis is considered the most consequential aspect of the polycrisis for EU external energy relations because it had a profound impact on the relationship between the Union and its main energy supplier, Russia. Subsequently, the case study on the ECT traces how the EU began shifting to a strategic approach already in the early 2000s. The case study on Nord Stream 2 reveals that EU institutions – particularly the Commission, but also the European Council, despite internal divisions – became full-fledged strategic actors in CEG by the late 2010s. The article concludes by arguing that the EU's adoption of a strategic approach to CEG has led to incoherence and contradictions and contributed to weakening multilateral energy governance.

### **Still a liberal actor? The scholarly debate on the EU's stance on international CEG**

The scholarly debate concerning the nature of EU actorness in international CEG became more intense in the late 2000s, when security considerations became prominent in energy policy discussions. Natorski and Herranz Surrallés (2008) showed that, by 2006, debates about energy security reached the top of the EU's political agenda. However, at this stage, the influence of European institutions in external energy relations remained limited. Hence, Natorski and Herranz Surrallés (2008, p. 71) maintained that EU institutions were not responsible for the securitization of energy discourses. They claimed that EU institutions had no interest in securitizing the debate because 'the security framing contributed to the further legitimisation of EU member states' reluctance to cede sovereignty in the energy domain'.

Other contemporary analyses defined the EU as a liberal actor and blamed member states or external actors for the securitization of the debate and the emergence of economic nationalism. McGowan (2008, p. 102) argued that 'liberalisation has become an important principle of not only the EU's internal energy policy but also its energy diplomacy'. However, 'there appears to be a mismatch between, on the one hand, an ostensible commitment to internal and external liberal strategies led by EU authorities and, on the other, conduct inside and outside the Union where governments support and protect incumbent firms'. The underlying assumption in these analyses of the late 2000s was that European institutions were benevolent liberal actors and passive recipients of strategic or geopolitical moves orchestrated at national level (cf. Judge & Maltby, 2017). This article challenges this view by showing that the negotiation strategies and policies of EU institutions had

strategic nature and fostered geopolitical competition already in the early 2000s, most notably in the context of ECT negotiations.

Beginning in the mid-2010s, scholars began to present a more nuanced view of EU actorness in external energy and climate policy. Based on her analysis of ideas informing the EU's stance on CEG, Kuzemko (2014, p. 70) argued that the Union's posture was 'neither market liberal nor geopolitical nor environmental', but rather a complex combination of these approaches. Moreover, she claimed that the EU 'also sometimes perceives its energy security in a geopolitical manner' and that its 'current interventions in energy markets for climate and geopolitical reasons suggest that the EU is a divided actor in energy'. Along similar lines, Herranz Surrallés (2016a, p. 1400) maintained that 'EU authorities appear to have even taken on functions that could be classified as 'energy diplomacy', i.e., the use of foreign policy means to secure access to foreign energy supplies'. According to Herranz Surrallés, the EU has gradually shifted towards a self-centred multilateralism in CEG and become less inclined to accommodate the interests of other actors in international settings. Tim Boersma and Andreas Goldthau (2017) noted that a 'securitisation turn' had occurred in EU energy policy. They contended that 'whilst most documents between 2009 and 2015 would make explicit reference to market integration, the liberal principle and related regulatory measures, the security element has, over time, gained prominence' (Boersma & Goldthau, 2017, p. 103).

The 2014 Ukraine crisis revived EU concerns about energy security and placed the issue of the security of Russia's supplies at the centre of European policy debates. The EU was confronted with the fact that its main external energy supplier was acting as a geopolitical competitor in Eastern Europe. The 2014 EU Energy Security Strategy and the plans to create an Energy Union were primarily a response to the Ukraine crisis and reinforced the securitizing trend in EU energy policy (Siddi, 2016). According to Boersma and Goldthau (2017, p. 106) 'the Energy Union proposals represent a shift in the Commission's agenda to the effect that for the first time, a strategic document outlining the EU's comprehensive energy policy prioritizes security'. The securitizing shift in the EU's energy debate induced the Commission to take a more active stance in shaping energy markets, which some analysts described as increasingly politicized and involving the selective application of EU regulations (Goldthau & Sitter, 2019). According to Andrea Prontera (2019, pp. 77–83), the EU's approach to energy policy and energy security problems increasingly shifted from a *faire-faire* approach, in which it focused on market-oriented tools and governance structures, to a *faire-avec* approach, where the Commission acted rather as a (political) facilitator than as an apolitical regulator.

Moreover, the Energy Union project reflected the tension between two partly contradictory sets of priorities. On the one hand, after the Ukraine

crisis, East-Central European member states (such as Poland) advocated the goal of reducing dependence on Russian oil and gas by exploiting domestic fossil fuels, both 'traditional' (coal) and new ones (shale gas). On the other hand, other member states (such as Germany) emphasized their desire to accelerate the transition to a low carbon economy, while maintaining a liberal approach to external energy policy (rather than a securitized stance). Different views on the priorities of EU energy policy have persisted, and partly identity-driven divisions among member states have had an impact on the EU's approach to international CEG (Siddi, 2018a; 2019b; see also von Homeyer et al., 2021). Eastern European member states with negative identity-based conceptualisations of Russia are also the most critical of the Union's energy relationship with Moscow and have advocated greater intervention in energy markets in order to refocus EU energy imports away from Russia (Goldthau & Sitter, 2020, p. 116). As energy policy is an area of shared competence between member states and the EU, the European Commission has had to consider and reconcile different national views (Siddi, 2016; Szulecki et al., 2016).

Despite their assertions concerning the growing securitization of EU energy debates and documents, most scholars continued to be wary of defining the EU as a full-fledged strategic actor in energy policy. Andreas Goldthau and Nick Sitter (2014, p. 1452) argued that the EU remained a liberal actor even as the world left the 'benign pro-market environment of the 1990s and became more mercantilist – or "realist"'. Herranz Surrallés (2016a, p. 1400) also claimed that 'a closer look at the policy practices on the ground reveals underlying continuity along the lines of the usual division of labour', where EU institutions continued to focus on introducing 'new measures to support diversification in line with the EU's traditional market-liberal rules and procedures'. While the European Commission and most member states endeavoured to amend EU legislation in order to thwart the Nord Stream 2 project (Fischer, 2017; Siddi, 2020), Goldthau and Sitter (2020) argued that the EU was divided on whether it should continue to approach CEG through a normative and liberal approach, or rather use regulatory tools for geopolitical purposes.

Internal divisions did exist, but by the late 2010s the EU had taken a strategic posture in its external energy policy. This article complements prior literature by arguing that growing geopolitical tensions, most notably the Ukraine crisis, induced the EU to shift fully to a strategic approach.

### **From a liberal to a strategic EU approach to multilateral energy governance**

In the 1990s, the EU promoted liberal principles in international CEG (such as free markets and competition), as opposed to monopolies and tighter

governmental control. At the same time, in an international context where other actors did not (fully) share these principles, there was an understanding that a cooperative framework should be based on the lowest common denominator. This was the logic that shaped the Energy Charter Process, which led to the signing of the Energy Charter Treaty by fifty contracting parties (including the EU and Russia) in 1994. The ECT aimed *inter alia* to ensure minimum standards for trans-border operations for transit. The focus was on Eastern European countries, which needed a workable framework to regulate the energy flows (from Russia westwards) that became subject to transit after the dissolution of the Council for Mutual Economic Assistance (Comecon) and the Soviet Union (Konoplyanik, 2017, p. 134; Kustova, 2014, pp. 164–165).

The logic behind the multilateral framework of the ECT was to provide common ground for the parties in a number of issue areas, without benchmarking them against a particular model of energy market organization. For instance, the ECT prohibited any interruptions of transit except for clearly defined *force majeure* situations, it encouraged the construction of infrastructure to facilitate transit and established that unreasonable charges cannot be imposed. This also implied that parties could apply more advanced measures in their national legislation, but could not request the same from other parties. Most notably, the ECT did not include obligations concerning third-party access to infrastructure or provisions about domestic market models (Konoplyanik, 2017, p. 131; Kustova, 2014, p. 166).

Hence, from the late 1990s until the early 2000s, the main legal principles concerning energy governance in the EU and the ECT largely coincided. Both EU energy law (following the adoption of the First Energy Package in 1996) and the ECT created a lowest common denominator for energy market liberalization, without enforcing principles such as third party access and the unbundling of energy markets.<sup>2</sup> However, a discrepancy between the ECT and EU law was to emerge in the mid-2000s, as the EU strived to deepen the integration of its energy market (Konoplyanik, 2017, pp. 129–132).

In 1998, the signatories of the ECT agreed to negotiate an additional agreement on transit, the Transit Protocol, in order to clarify issues such as the conditions for access to transit or the construction of new infrastructure. Due to differences in domestic market models, particularly between Russia and the EU, finding a commonly accepted framework proved difficult, but the participants eventually converged on the overall goal of stable transit (Waern, 2002). However, in 2002, whilst the work on the draft was nearly completed, the EU introduced the Regional Economic Integration Organisation (REIO) clause. The EU demanded that, as a REIO, it should be regarded as one single area in order to ensure the cohesiveness of intra-EU integration, which *de facto* excluded its territory from the transit provisions of the ECT and the Transit Protocol. It was argued that energy flows within and destined



for use in the EU internal market would be covered by EU law, and not by the Transit Protocol (Konoplyanik, 2009).

This immediately raised controversy within the working groups and between the EU and Russia. The Russian delegation in particular argued that the REIO clause would exclude some contracting parties (the EU and its member states) from obligations that would apply to others. Moreover, the EU's stance conflicted with the fact that different markets and transit contracts existed within the EU. Several proposals were discussed in order to resolve the deadlock, but the EU remained firm on the position that the rules of the Transit Protocol should not apply within its territory. The controversy hindered the main goal of the negotiations, namely ensuring stable transit (Belyi, 2014; Konoplyanik, 2017). Subsequently, Russia lost trust and interest in the ECT process. Neither Russia nor Ukraine resorted to ECT provisions to resolve the gas transit crises of 2006 and 2009. In 2009, Russian authorities publicly accused the Energy Charter of inaction vis-à-vis the gas transit crisis and terminated the provisional application of the ECT (Konoplyanik, 2017, pp. 137–138).

The EU's uncompromising stance on the REIO clause was motivated by its objective of creating a common, integrated EU energy market. However, it also had broader political consequences that transcended the EU, as it affected the energy relationship with Russia. The request to consider the EU as a common energy market, regardless of the actual market fragmentation at the time, can be seen as a strategic move with geopolitical consequences. It would allow the EU to acquire market power vis-à-vis external actors and suppliers and eventually induce them to accept market rules formulated by the EU.

This became even clearer between 2003 and 2009, when the EU introduced new legislation – the Second and Third Energy Packages – which made third party access and the unbundling of the energy sector mandatory (Eikeland, 2011). The new legislation impacted the *modus operandi* of Gazprom, the largest gas supplier to Europe and a key Russian state asset. Furthermore, the EU promoted the adoption of its legal *acquis* in neighbouring states, most notably through the Energy Community Treaty, signed in 2006 (Konoplyanik, 2017, p. 130). The export of EU energy norms to Eastern and South-Eastern Europe involved a geopolitical dimension, notably the approximation of the region to the EU (see also Nitoiu & Sus, 2019). The EU could be seen as using its regulatory power to achieve greater political influence over neighbouring countries. This contributed to the incipient economic and political competition between the EU and Russia in their shared neighbourhood in the late 2000s.

During the 2010s, EU-Russia competition became more acute and played a role in precipitating the 2014 Ukraine crisis. In this context, confronted with Russia's assertive foreign policy, the EU started to use its energy legislation

to pursue political goals, which in turn led to inconsistencies and conflicts with multilateral energy governance frameworks. The EU's support of selected infrastructure to connect national gas markets and the application of certain provisions of the Third Energy Package seem aimed at curbing the role of Russian gas providers in the EU market. This has exposed the EU to the argument that it has violated the non-discrimination principles enshrined in multilateral trade and energy governance. Significantly, in 2018 a panel established by the Dispute Settlement Body of the World Trade Organisation (WTO) upon Russia's request ruled that the EU was discriminating against Russian gas projects. The ruling was the result of a complaint filed by Russia in April 2014 against the EU's Third Energy Package. While arguing that the main principles of the Package are lawful, the WTO panel specified that the EU's Trans-European Networks for Energy (TEN-E) strategy (which aims at linking member states' infrastructure) is inconsistent with WTO law because it provides most favourable conditions for the transportation of natural gas of any origin other than Russian. The WTO panel also found that the EU had artificially restricted the use of the OPAL pipeline, a land-based continuation of the Nord Stream pipeline, by imposing a 50% utilization cap, despite the fact that no other supplier but Gazprom intended to book pipeline capacity (WTO, 2018; cf. Talus & Wüstenberg, 2019).

Hence, a conflict has developed between the EU's approach to international energy governance and other multilateral governance bodies, such as the WTO. By openly opposing and trying to complicate the realization of pipelines transporting Russian gas, the EU appears to disregard the non-discrimination principles that are central to the WTO system. Although the WTO panel highlighted this with reference to the TEN-E strategy in 2018, the EU has since maintained a similar stance vis-à-vis Nord Stream 2, which is the only pipeline affected by the 2019 Gas Directive amendment (see below). Moreover, despite the WTO's criticism of the EU's regulation of the OPAL pipeline, in September 2019 the General Court of the European Union ruled that restrictions in the use of the pipeline were justified based on the principle of energy solidarity (among EU member states). The Court's pronouncement was the result of a lawsuit initiated by Poland against the European Commission's decision to lift such restrictions in 2016 (General Court of the EU, 2019; Shotter, 2019).

Furthermore, in the summer of 2019, the Council of the EU gave a mandate to the European Commission to pursue a revision of the ECT (European Council, 2019). Ostensibly, the decision of the Council was not linked to developments in energy relations with Russia, although it was taken shortly after the Nord Stream 2 company had filed a notice of dispute under the ECT concerning the Gas Directive amendment (see below). Even so, the decision was justified with reference to other EU strategic goals. The Commission expressed its willingness to reassert its right to regulate in the field of

energy by modifying the ECT's investor protection clauses, citing in particular its intention to promote the clean energy transition and workers' rights (Simon, 2019). Recent scholarship has corroborated the EU's stance by arguing that the ECT has not led to a tangible increase in investments in the renewable sector, whereas its investment protection clauses could be used by the fossil fuel industry to impede a clean energy transition (Tienhaara & Downie, 2018). However, in the past the clauses were also invoked to protect investments in renewable energy (see Konoplyanik, 2017); hence, it is unclear whether renegotiating them will have a positive impact on such investments in the future. Most importantly, the EU's attempt to renegotiate the ECT constitutes another manifestation of its shift to a strategic approach in CEG, whereby the Union seeks to adapt international norms to its political agenda.

As shown by the EU's justification for seeking a renegotiation of the ECT, the growing discursive focus on the energy transition in Europe also plays a role in the Union's shift to a strategic approach to CEG. Previously agreed multilateral norms are seen as constraining the EU's capacity to govern the energy transition. Significantly, in the first months of her mandate as President of the European Commission, Ursula von der Leyen declared the energy transition a top priority and simultaneously emphasized that she will lead a 'geopolitical Commission' (Von der Leyen, 2019). The claim that the Commission will take a geopolitical stance highlights its growing ambition to act strategically and defend the EU's interests in international politics within a context of great power competition. As energy resources are central to geopolitics, von der Leyen's statement has implications for the EU's stance on CEG and substantiates that the EU is adopting a strategic approach in this policy area.

### **Using energy legislation for strategic goals: Nord Stream 2 and the amendment of the Gas Directive**

The Nord Stream 2 project is exemplary of how growing geopolitical competition after the 2014 Ukraine crisis affected the EU's external energy policy and led the Union to adopt a strategic stance. During the Nord Stream 2 dispute, geopolitical logic was more influential than economic or normative considerations in shaping the EU's approach. Nord Stream 2 comprises a set of pipelines that transport gas from Russia to Germany (and from there, to other EU members) via an offshore route in the Baltic Sea. The project has a capacity of 55 billion cubic metres per year doubling the already existing capacity of the Nord Stream pipeline. It was launched in the summer of 2015, approximately one year and a half after the beginning of the 2014 Ukraine crisis, by Russia's state company Gazprom and four European corporate partners (the German Wintershall, the French Engie, Austria's ÖMV and Dutch/British Shell).

Shortly after the project was announced, Nord Stream 2 began to draw criticism from Eastern EU members (Poland, the Baltic States, Slovakia and Romania in particular), which argued that the project would consolidate Russia's influence in the European gas market and weaken Ukraine's role as a gas transit country. Critics highlighted that Nord Stream 2 contradicted the EU's support of Ukraine in the ongoing crisis with Russia. Conversely, member states favourable to the project – Germany and Austria in particular – argued that it was a commercial endeavour with positive effects for European energy security, hence it should not be undermined by politics (Siddi, 2020). Significantly, the United States also intervened in the dispute by arguing that Nord Stream 2 deepened the EU's energy dependence on Russia and undermined Ukraine's interests (Cafruny & Kirkham, 2020, pp. 97–98).

Until 2016, the US presidential administration led by Barack Obama limited its action to political criticism. Following the election of Donald Trump and the domestic dispute over Russian interference in the 2016 US presidential elections, both the new President and the US Congress took more resolute action against Nord Stream 2. While Trump exacerbated the US rhetoric against the project, and overtly attacked Germany for supporting it, the US Congress drafted extraterritorial sanctions that target companies working on the construction of Nord Stream 2 (Siddi, 2020, pp. 13–14). Another reason for the US stance may have been Washington's desire to support exports of US liquefied natural gas to the EU market against Russian competition. This was denounced by the German and Austrian foreign ministers in 2017 (German Foreign Office, 2017). Hence, Nord Stream 2 reflected and further fuelled geopolitical competition between the United States, on the one hand, and Russia and some EU member states (Germany in particular), on the other.

While arguments focused on geopolitical and economic considerations, the Nord Stream 2 dispute also reflected radically different, identity-based conceptualisations of (energy) cooperation with Russia. The governments of Eastern EU members, such as Poland, viewed both the pipeline and energy trade with Russia as posing a security threat. They also constructed analogies between Russia's and Germany's cooperation on Nord Stream and the Nazi-Soviet partition of Eastern Europe in 1939. Hence, they securitized the debate and were the most ardent supporters of an EU strategic approach that would prevent the implementation of the project. Conversely, German leaders considered Nord Stream 2 as a way of engaging Russia and defusing political tensions, following the *Ostpolitik* logic that had shaped the (West) German stance towards Moscow since the late 1960s (Heinrich, 2018; Siddi, 2019b). Following the Ukraine crisis, these different intra-EU perspectives on energy cooperation with Russia became even more difficult to reconcile, particularly because the opposition of Eastern EU members to new gas projects involving Russia became more radical. Russia's power politics in

Syria and in its broader relationship with the EU (through presumed cyber-attacks and electoral interference) further contributed to radicalizing the political climate around EU-Russia energy trade (Siddi, 2019b).

The ensuing tensions resulted in a protracted institutional dispute within the EU, which focused on the Nord Stream 2 project, but also had broader consequences for the Union's approach to energy governance. Caught between member states' opposing views on Nord Stream 2, EU institutions initially took different stances. The European Commission opposed the project. In June 2017, it requested a mandate from the Council of the EU to negotiate an agreement with Russia concerning the operation of Nord Stream 2, arguing that it was necessary to define a legal framework, with the apparent goal of limiting Gazprom's ability to use the pipeline. However, the Legal Service of the Council opined that there was no legal rationale for an EU-Russia agreement concerning the project. By arguing that a legal rationale was missing, the Council also implied that the issue was primarily political and should be addressed at the political level (Fischer, 2017; Siddi, 2020, p. 12).

However, the Commission – with the support of some Eastern members – insisted that a legal void existed. It partly adjusted its argument to claim that, following the introduction of the Third Energy Package in 2009, its prescriptions concerning ownership unbundling and third party access applied not just to EU territory, but also to the territorial waters of EU member states. This contradicted the earlier practice of applying international law – and, specifically, the United Nations Convention on the Law of the Sea – to regulate offshore pipelines until they reach land in the EU. The applicability of international law, rather than EU internal market legislation, to offshore pipelines from third countries was reiterated by the Legal Service of the Council in its opinion cited above. In order to enforce its reasoning, the Commission proposed amending the Gas Directive, which is part of the Third Energy Package, to make sure it would also apply to new offshore pipelines in member states' territorial waters. This stratagem would, at best, create uncertainty and hinder the operations of Nord Stream 2, thereby delaying the project (Yafimava, 2019; cf. Hancher & Marhold, 2019). Most significantly, the Commission made use of internal market regulation in the pursuit of a political goal, namely preventing the implementation of a project led by Gazprom. This exemplified the Commission's adoption of a strategic approach to energy policy.

To become law, the amendment of the Gas Directive required the support of a qualified majority of member states – that is, 55% of member states voting in favour, and representing at least 65% of the total EU population. In 2017 and 2018, this seemed highly unlikely, as the opposition of Germany, France and several other smaller EU members ensured a blocking minority (Yafimava, 2019, p. 1). A turning point was reached in February 2019,

when France suddenly voiced its support for amending the Gas Directive. This made Germany seek bilateral negotiations with France in order to achieve a compromise on the Gas Directive. Eventually, a common text was agreed that made the Gas Directive applicable to EU territorial waters, but left the member state where the pipeline first lands in charge of implementation and of authorizing exemptions (which, however, have to be agreed upon by the European Commission). The Franco-German compromise was then adopted at EU level (Gurzu, 2019a).

The Gas Directive amendment appeared as a *lex Nord Stream 2*, namely as a legislative act that tweaked EU legislation to target specifically the Nord Stream 2 project (Talus & Wüstenberg, 2019). By designing and vigorously supporting the amendment, the European Commission exposed itself to the criticism of having politicized EU regulations. The EU also exposed itself to legal claims from the Nord Stream 2 company under international and European law. The company argued that, if it were not given the possibility to obtain a derogation from the amended Gas Directive, it would consider the legislation as arbitrary and discriminatory. It filed a notice of dispute to the EU under the ECT, a sign that it would attempt to protect investments already made in the project (around €5.8 billion by spring 2019) through legal means as well (Gurzu, 2019b). In July 2019, the company asked the Court of Justice of the European Union to annul the amendment of the Gas Directive, arguing that it infringed the legal principles of equal treatment and proportionality. At the same time, it reserved itself the option of resorting to legal arbitration under the ECT (Gotev, 2019).

Independent of how the dispute will end, it has showed that EU institutions are willing to use energy regulation in the pursuit of political and strategic goals – in this case, hindering a new energy project because it could reduce Ukraine’s geopolitical significance and strengthen Gazprom’s role in the EU market. Eminent legal and energy experts have made this argument (Talus & Hancher, 2019; Talus & Wüstenberg, 2019; Yafimava, 2019), whereas opponents of Nord Stream 2 take a different view (see for instance Riley, 2018). The analysis above showed that the EU adopted a strategic stance in its handling of Nord Stream 2, despite the risk of contradicting established principles of international energy governance. Being driven by geopolitical tensions, the EU’s stance on Nord Stream 2 reinforced these tensions because it fed the perception that the project was treated unfairly, particularly among its advocates and Russian officials.

## Conclusion

The article has illustrated the long-term shift in the EU’s approach to international CEG from searching for a lowest common denominator with external partners to adopting a strategic and unilateral approach, in which regulation

can be used as an instrument to assert the EU's interests and political goals. The main contribution of the article lies in critically reviewing scholarly literature on EU actorness in CEG and the reconceptualization of the EU as a strategic actor based on a systematic analysis of its stance in the ECT negotiations and *vis-à-vis* Nord Stream 2.

The article situated the changing EU approach to international CEG in a long-term perspective, from the ECT process in the 1990s until the emergence of inconsistencies and conflicts with multilateral energy governance in the 2010s. This long-term perspective allows a more comprehensive assessment of EU actorness in CEG over time, as well as a better understanding of why the EU's adoption of a strategic stance on CEG is a significant development. As a result, the article was also able to better assess the impact of the EU's polycrisis on the Union's long-term approach to CEG. While earlier analyses had argued that the EU remained mostly a 'liberal actor in a realist world' (cf. Goldthau & Sitter, 2014) in CEG, this analysis has shown that the EU has in fact moved to a strategic approach. The EU's handling of Nord Stream 2 and the Gas Directive amendment exemplified the EU's shift to a strategic stance in the aftermath of the polycrisis (see also De Jong & Van de Graaf, 2020).

The analysis highlighted that, while in the 1990s the EU pursued the consensus-based promotion of liberal principles in energy governance (most notably through multilateral frameworks such as the ECT), it later started to seek exemptions from international regimes and to assertively export its norms to neighbouring countries. The introduction of the REIO clause during the Transit Protocol negotiations in 2002 and the 2006 Energy Community Treaty epitomized the EU's shifting stance in the 2000s. While the EU justified its posture with the objective to create a common European energy market, its practice of exporting its energy norms had geopolitical consequences, most notably the approximation of neighbouring regions to the EU's political and economic systems. This approach caused tensions with Russia that became more acute in the 2010s, in a context of great power competition. The polycrisis with which the EU was confronted in the 2010s, especially the Ukraine crisis, played an important role in the Union's shift to a more strategic stance on energy relations with Russia and CEG.

The post-2014 crisis in relations with Russia, Europe's main energy provider, has resulted in the growing securitization of EU energy policy. Intra-EU divisions, and particularly the tendency of some Eastern members to securitize their energy relationship with Russia, have fuelled this process. The EU's handling of the Nord Stream 2 pipeline epitomizes how the EU has been willing to use energy legislation (notably the Gas Directive) to pursue strategic goals, such as hindering new projects promoted by Gazprom. Geopolitical tensions and Russia's aggressive policies in Ukraine drove the EU to adopt a strategic stance. However, by adopting this posture, the EU also

reinforced geopolitical tensions and proved unable to solve relevant intra-EU divisions.

Significantly, the EU's strategic use of regulation has led to inconsistencies with multilateral energy governance, notably some aspects of WTO and ECT law. The EU has been accused of disregarding non-discrimination principles that are central to the WTO system. Nevertheless, Brussels has not altered its approach and has continued to promote a 'self-centred multilateralism', through which it seeks to adapt international norms to its agenda. The recent attempt to seek a renegotiation of the ECT's clauses concerning investment protection provides a highly relevant example. In this context, the growing discursive focus on the energy transition in the EU also plays an important role. The EU has argued that the clauses should be renegotiated in order to promote the clean energy transition. In other words, the EU sees important components of the existing multilateral CEG framework as constraining its capacity to govern the energy transition.

The immediate priorities of the new European Commission President, Ursula von der Leyen, suggest that she is keen to uphold a strategic approach to energy policy. Von der Leyen has made the energy transition a top priority of her agenda. At the same time, she has vowed that she will lead a 'geopolitical Commission' (Von der Leyen, 2019). The announced focus on geopolitics suggests that the EU will continue to adopt a strategic stance in international politics, despite the risk that such posture may further encourage great power competition and intra-EU divisions. The implementation of the climate agenda (the European Green Deal, the Paris Agreement) will require multilateral cooperation with external partners and other large emitters. Hence, a central question – for both further academic analyses and EU policy makers – remains whether the Commission's strategic approach and geopolitical ambitions can easily be reconciled with multilateral energy governance and the climate agenda.

## Notes

1. Regulatory power is defined as 'the ability to formulate, monitor and enforce a set of market rules in a jurisdiction. Regulatory power has two essential prerequisites: a sizeable internal market and potent regulatory institutions' (Siddi, 2018b, p. 1553).
2. In this context, 'unbundling' refers to the separation of ownership of energy production and transportation, hence the end of a system based on vertically integrated energy companies.

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