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High Level Reflection Group Assessment on the Energy
Community of South East Europe: a possible Institutional
and Strategic Scenario for the Future

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Abstract

After the first working period, the Energy Community Ministerial Council in October 2013 decided to evaluate the current status of the Community taking into account the adequacy of the institutional set up and working methods, the targets defined in the Treaty and their achievement.

The Council appointed the High Level Reflection Group (HLRG) as a third and independent body called to assess the hitherto Community situation and to suggest how to orient the Community's future actions.

Beyond the institutional reforms, the international scenario could interfere with the Energy Community future development.

Key

Energy Community, South East Europe, Energy Policy, Energy Security

Energy Community 2014: first evaluation

The Energy Community of the South East Europe (ECSEE)¹ has been established by the signature of the relevant Treaty in October 2005.

The Community is aimed at reforming the energy markets of the Contracting Parties in order to integrate them into the European Union's energy market.

The Energy Community is usually considered a win-win instrument since both European Union and Contracting Parties would benefit from the ECSEE activities².

In fact, on one hand, EU is promoting an effective cooperation with neighboring Countries in order to enhance the infrastructures' inter-connection process and to strengthen the European energy security and supplies diversification policies.

On the other hand, the Contracting Parties could take the chance to be involved in a regional process aimed at enforcing the markets' reforms as precondition to attract investments and at evolving the energy regulation towards a more transparent, effective and secure market.

After the first working period, the Energy Community Ministerial Council in October 2013 decided to evaluate the current status of the Community taking into account the adequacy of the institutional set up and working methods, the targets defined in the Treaty and their achievement.

1. Further information http://www.energy-community.org/portal/page/portal/ENC_HOME; Stephan D. Hofer, *Neo-functionalism reloaded. The Energy Community of Southeast Europe*, IX Annual Kokkalis Graduate Student Workshop, Harvard University, 2007 Massari S. F. *La Comunità Energetica del Sud Est Europa* ISBN 978-3-639-67601-3 Press Accademiche Italiane, Saarbrücken, Germany 2013

2. Prof. Jerzy Buzek Chairman of the High Level Reflection Group *"We hope that these proposals will be helpful in rendering the Energy Community an even more powerful win-win instrument of international energy policy"*.

The Council appointed the High Level Reflection Group (HLRG)³ as a third and independent body called to assess and to report on the hitherto Community progress.

Secondly, the HLRG has been called to suggest how to orient the Community's future actions and how to reshape the institutional framework in order to enhance the Community's role in the forthcoming years.

The High Level Reflection Group identified four main working areas to be investigated, namely Community's legal perspective, investments, geographical scope and institutions.

Fig:1 Energy Community: current shape



Source: Energy Community www.energy-community.org

3. Energy Community High Level Reflection Group was established by the Energy Community Ministerial Council decision on 24 October 2013: the Ministerial Council appointed Prof. Jerzy Buzek as Chairman, who subsequently designated five members of the Group: Mr. Walter Boltz, Ms. Vesna Borozan, Mr. Fabrizio Donini Ferretti, Mr. Volodymyr Makukha and Mr. Goran Svilanovi.

These spheres have been deeply analyzed by HLRG in order to understand how the ECSSE activities have been so far evolved and how they could be improved.

HLRG identified three levels of intervention: In fact, the implementation process could not require modification of the Treaty (first level), it could require a modification by a Ministerial Council's decision (second level) or it could require a full Treaty revision (third level).

On the grounds of these premises, the HLRG released a report called "*An Energy Community for the Future*" on May 2014, underlining the general remarks immediately evident from the current Community's *status* assessment.

Although the Energy Community is considered the EU most successful external energy cooperation experience, the real situation presents several points not yet reached.

Actually many items on the ECSEE Agenda are partially achieved and the ambitious potential of the Treaty is not completely exploited.

The reform of the regional markets towards a single competitive market is still far to be completed as well as the setting of cost-reflective prices and market's tariffs mechanism⁴. This situation has not been favorable for market development climate and both infrastructures' status and environmental standards in energy production remain poor.

Secondly, the HLRG identifies in its report the lack of an effective enforcement/sanction mechanism as main constraint for the Treaty implementation. Consequently, HLRG deems the absence of a Court able to investigate and to sanction the Treaty's infringements the main reason of the unfulfilled Treaty expectations.

Besides, Contracting Parties are facing different conditions from an economical and social point of view. This suggests that the Energy Community's working method should be based on different approaches applicable to peculiar contests. It is not predictable the immediate transposition of the European regulation on energy matter in a such scattered environment.

4. Further information on cost-reflective price and tariffs mechanism: H. Park "*Towards cost-reflective energy Pricing in Ukraine*", International Association for Energy Economics London, newsletter first quarter 2011: S.F.Massari "*L'energia fattore fondamentale di crescita: una analisi delle relazioni tra sviluppo umano, povertà energetica e modello di mercato nel quadrante balcanico*" Pecob's Paper Series no. 31 Gennaio 2013 Alma Mater Studiorum Università di Bologna ISSN: 2038-632X

Nevertheless, the HLRG underlines that the current international political situation is showing how ECSEE is important as EU energy policy instrument for the security of energy supply and for implementing the rule of law in the EU neighboring Countries⁵.

As mentioned above, considering the general scenario, the HLRG evaluates four fields of work to identify proposals aimed at overcoming hurdles impeding the fully achievement of the Treaty targets.

Implementing rules

As already reported, one of the main issues to enhance the Energy Community is implementing common rules in the legal frameworks of Contracting Parties.

In the light of this remark, the HLRG has underlined a preliminary issue in the Treaty's structure: in fact, the Treaty only envisages the freedom of movement of goods.

It is well known that the European fundamental economic freedoms are extended to the freedom of establishment, services and capital, actually missing in the ECSEE Treaty provisions.

Considering the lack of a complete set of freedoms, the regional market cannot be integrated since several constraints- such as double taxation, different corporate requirements and investments restrictions- are potentially creating hurdles to the investments.

Secondly, the HLRG identifies a key factor in the Community rules implementation process: actually, the Treaty provisions have to be applied considering the different conditions of the Contracting Parties.

Flexibility should be the rationale of the Energy Community policies in the *acquis communautaire* transposition process as well.

5. In 2013 the Shah Deniz gas fields Consortium decided to improve the off shore natural gas production in Azerbaijan starting from 2018: after this decision the South East Energy Corridor throughout the Balkans has become a reality. Considering the current geopolitical risks related to the Russian-Ukrainian crisis, the prolonged instability in North Africa and Iraqi destabilization actually in progress, the South East hydrocarbon route is more and more precious in order to implement the diversification and supply risk management policies. This topic is particularly sensitive for the European Union and for the Balkans as well, considering the dependence level from few suppliers.

Indeed, very often ECSEE policies and EU Directives have not been effectively enacted since the receiving parties were not ready from institutional, technical, social or economical point of view.

On the other hand, a flexible approach should be adopted in the EU-Energy Community relations' governance design as well as in the pan European energy market where the decision making process should not be regulated as a one-way road.

In conclusion, the HLRG encourages the direct enforcement of the Energy Community Treaty provisions before national Courts pushing for an immediate applicability when the Treaty is regulating the matter in a sufficiently clear and defined manner.

Investment for enhancing citizens' benefit

One of the most important targets of the Energy Community is to create a sound private investment climate in the area.

According to the HLRG findings, the private equity investments in the region are currently below the expected levels: on one hand it is due to the general financial crisis that has reduced the investment attitude in Europe and in Balkans as well.

Nevertheless, from a structural point of view, the Treaty seems to be not deeply focused on the matter and the infrastructural investment improvement actions are not well indentified in the Treaty's provisions.

Actually, attracting private investment would represent one of the meaningful targets to be pursued by the Energy Community Institutions⁶ considering the current high-risk profile of the most of the Countries in the Region.

As a matter of fact, the missing market reforms and the "in progress" *acquis communautaire* transposition is not preparing the best climate for the investors that could feel their capital not completely safe from political and structural risks.

6. The Energy Community issued on this matter the "Study on Recommendation for funding investments in energy Community Gas Ring" that is an useful analysis on the markets' current situation and tools to mitigate the investment risks in the area.

It is true that in this condition the public financing has been the main investment source so far: unfortunately, the wide range of infrastructural projects and related costs cannot be borne only by public budgets.

For this reason, an investment-friendly area has to be created first by the transposition of European standard on transparency and predictability. Permitting procedures should be harmonized in order to make easier the cross border investments.

Secondly, a more effective fund-raising mechanism should be improved at the bilateral and multilateral levels pushing Contracting Parties, International Donors and European Union to better support financially the Energy Community.

Furthermore, the accomplishment of the obligations coming from the Treaty should be in the conditionality policies of the International Financing Institutions (IFIs) in order to coordinate the common efforts in the structural reform implementation process.

In order to mitigate the investment risk the HLRG proposes a specific vehicle called “*Energy Community Risk Enhancement Facility*” that should provide guarantees or insurances to the investors interested in the Community area in case of breach of contracts by public bodies, retroactive measures, legislation changes etc.

Enlarging the Energy Community

The Energy Community has already lived an enlargement process during the latest eight years: in fact Moldova and Ukraine joined the Community in 2010 and 2011 respectively.

Georgia is currently in the process to become a full fledged member whilst Armenia (2011), Turkey (2006) and Norway (2006) obtained the “observer” status.

The reflection on Energy Community enlargement process has driven the HLRG to conclude that no geographical limitation should be imposed on the territorial range of ECSEE. This position comes from several European Institutions’ statements that defined the ECSEE as the

most effective tool to extend the energy EU relations to neighboring Countries on the ground of the rule of law and *acquis communautaire*.⁷

Thereof, according to the HLRG no boundaries should be considered valid to join the Energy Community that has to become the main instrument to organize the European Union’s external energy relations. Several areas such as Mediterranean, Black Sea and Caspian could be encompassed in the ECSEE with significant strategic benefits whilst the EU could spread its standard rules and principles beyond the current sphere of influence.

As a matter of fact the Energy Community current activities and projects are already involving “extra territorial” dynamics: for instance, the planned Ionic-Adriatic Pipeline⁸ is conceived as a link between the Ionic and Adriatic regions to create an infrastructural cooperation in the area.

Moreover, the Trans Adriatic Pipeline planned from Greek-Turkish border to the South Italy’s shores is the final part of a complex route that will carry the Azerbaijani natural gas to Europe throughout several pipelines involving Azerbaijan, Georgia and Turkey.

It is clear, the Energy Community could be the appropriate framework to coordinate coherent policies aimed at standardizing the regulation in order to improve security supply in a homogeneous and integrated market.

Nevertheless, the structure of such organization should be based on a flexible approach since a very large number of Countries with different interests and different positions would be involved.

Thinking of this aspect the HLRG proposes to create a “variable geometry structure” able to grant various level of membership according to the their level of involvement.

In this way, the Community should be composed of Members Countries (instead of the current Contracting Parties) and Associated Members. The Members’ level of commitment should be more in-

7. European Commission Communication: “The EU Energy Policy: Engaging with Partners beyond Our Borders”, 7.9.2011, COM(2011) 539 final; European Parliament “Resolution on the European Neighborhood Policy” adopted on 23 October 2013

8. The Ionic-Adriatic pipeline is defined by ECSEE as Project of Energy Community Interest (PECI): a list of Projects of Energy Community interest is available at http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/Investments/PECIs/List_PECI

tense whilst the Associated Members should acquire basic common rules coming from both European *acquis communautaire* and the Energy Community decisions.

Refurbishing our house: an institutional, legal and procedural reform for the future

The HLRG identifies several points in the Agenda for the improvement of the Energy Community activities and actions but the real achievement of these items would not be reached without a reflection on the current institutional set-up and possible reform.

The Energy Community is a very peculiar international organization: Unlike the others the Energy Community has a set of Institutions and procedures that create a very deep level of integration between the Members⁹.

Nevertheless the current institutional architecture seems to be not

9. The current Institution setting is the follow: 1) Ministerial Council Ministerial key task is to ensure that the objectives set out in the Treaty establishing the Energy Community will be attained. In its function of an executive organ, the ministers provide general policy guidelines; take Measures; adopt Procedural Acts. 2) Permanent High Level Group (PHLG) is composed of one representative of each Contracting Party and two representatives of the European Community, the is more closely involved in the Energy Community's day-to-day work. One non-voting representative of each Participant may participate in its meetings. PHLG meets normally four times a year and is in charge of preparing the work of the Ministerial Council; giving assent to technical assistance requests made by international donor organizations, international financial institutions and bilateral donors; reporting to the Ministerial Council on progress made toward achievement of the objectives of this Treaty; taking Measures, if so empowered by the Ministerial Council; adopting Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community; discussing the development of the *acquis communautaire* described in Title II on the basis of a report that the European Commission shall submit on a regular basis. 3) Secretariat's responsibility is to provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the For a; review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council; review and assist in the coordination by the European Commission of the donors' activity, and provide administrative support to the donors; carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; adopt Procedural Acts. 4) Energy Community Regulatory Board (ECRB) is the coordination platform for exchange of knowledge and development of best practices for regulated electricity and gas markets in the Energy Community. 5) The Forum has the task to advise the Energy Community. It embodies the broadest discussion platform within the Energy Community institutions. Further information http://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Institutions Massari S. F. "La Comunità Energetica del Sud Est Europa" ISBN 978-3-639-67601-3 Press Accademiche Italiane, Saarbrücken, Germany 2013

adequate to enhance the Community to enter into a new and stronger cooperation level.

Actually, the European Institutions pushed the Energy Community to go forward the reforms' road above all in order to enlarge the regulatory scope, to enhance the decision-making mechanism and political empowerment¹⁰.

First issue to be engaged is the lack of an adequate enforcement mechanism that could strengthen the role of the Energy Community in front of the unfulfilling Contracting Parties.

Hitherto, the current sanction mechanism envisaged by the Treaty in case of infringement of a specific obligation is very general in defining the "breach of obligation" and in subsequent sanctions¹¹.

A real and effective architecture should provide a "Treaty fulfillment" incentive/sanction mechanism against the infringement of the Treaty obligations.

The Contracting Parties' breaches of the Treaty should pass through a Court appointed to regulated disputes and to financially sanction in line with the model adopted by the European Union in case of infringement of European Law by a Member State.

Secondly the Court should be open to evaluate claims from private parties, companies and individuals applying for a sanction or annulment of national laws in contrast with the Treaty provisions.

This would really change the current approach which is based on a procedure held in front of the Ministerial Council or, often, on a multi-lateral or bilateral informal negotiation.

Actually, the Council is a political body and, on the contrary, its role should concern only the Community policies and strategic decisions.

As a matter of fact, the political decisions are usually based on specific dynamics diverging from the juridical rationale: it means that when the political conditions impede to apply the Treaty provisions the Treaty construction itself is seriously jeopardized and the Community Institutions lose their authority and effectiveness capacity.

10. Statement of the Commissioner Günther Parliament, conference: "An energy community for the future" Brussels, 20 March 2014 <http://www.energy-community.org/pls/portal/docs/2982031.PDF>.

11. According to the current provisions in the event of serious and persistent Treaty's obligations breach, the Ministerial Council may, acting by unanimity, suspend "certain rights granted to this party" by the Treaty.

Recently, the Secretariat of Energy Community contributed to setting a dispute between Albanian government and the Czech Company ČEZ.

This activity has shown the importance of a third party in the disputes settlement since it could improve the level of confidence of foreign investors that can rely on an independent authority able to solve disputes in a reasonable time and a fair way.

At the same time, this could match the national government's expectation; a long and uncertain dispute in the strategic energy sector could create negative impact on the internal economy¹².

Besides, the institutional reshaping process calls the Secretariat to review its position in order to enforce its executive and investigative powers toward a full competence in the competition issues.

The Permanent High Level Group should take a role of plenipotentiary for collective decision making process.

A new cooperation should be created between the Energy Community Regulatory Board and the European Agency for Energy Regulator (ACER) in order to avoid duplication and to allow the involvement of the "not yet" EU member Countries in the European Agency of Regulators.

12. The Energy Community Deputy Director Dirk Buschle stated about this event: *"On behalf of the Energy Community Secretariat and in my personal capacity as mediator of the negotiations between Albania and ČEZ, I highly welcome the Settlement Agreement between both parties signed yesterday. I am deeply convinced that entering into and concluding these negotiations are in the best interest of Albania and its electricity consumers". "Years of neglecting the energy sector left the Albanian energy sector in a very bad shape, with an unsustainably high share of electricity not paid for, the State-owned companies in serious financial difficulties, and investor confidence alarmingly low. In this situation, settling the dispute with ČEZ was the only sensible move. Costly arbitration proceedings with an unclear outcome would have created a long period of uncertainty and instability. By preventing the urgently needed deep reforms, they would have taken the whole energy sector hostage and created liabilities far higher than what was settled by yesterday's agreement". "From many talks during the recent months, I know that private investors and public institutions alike would have been more than reluctant to support a country with these open legal and financial liabilities. Stability and the good reputation of Albania's energy sector needed to be restored as an indispensable first step to turn the sector around. For this reason, the Energy Community so actively supported the negotiations during the last six months. It will continue to do so during the upcoming reforms which can now begin. I am very pleased that in concluding these negotiations the Albanian Government set the long-term interests of the country above the short-term desire for legal confrontation."*

Conclusion

The Energy Community of South East Europe is one of the most interesting international organizations in the South East Europe area. The ECSEE has been established by the first binding multilateral/regional agreement signed after the Nineties war.

The Treaty has to be considered one of the most powerful tools to enhance the relations at the regional level and to strengthen the EU energy relations with neighboring Countries.

Nevertheless, the potential of the Community has not been fully exploited after eight year since the Treaty signature. The low level of foreign investments in the area is showing how the energy market's reforms have not been completed and the transposition of the *acquis communautaire* towards a transparent, equal and competitive framework has not been achieved yet.

In order to trigger the area's processes and to develop advanced infrastructures networks and effective legislative frameworks the HLRG suggests the Energy Community Institutions reform.

Strengthening the incentive/sanction mechanism is one of the meaningful reforms the High Level Reflection Group has identified: a Community Court has to be appointed to effectively sanction possible Treaty infringement of the Contracting Parties.

The Secretariat should have the role of "Guardian of the Treaty" with investigate powers in competition and State-aid matters.

The provisions of the Treaty should be immediately applicable in favor of individuals and private companies in front of national Courts and Community Institutions with a strong extension of the Treaty to the freedom of establishment, services and capital.

Nevertheless, a new working method is warmly suggested by HLRG: considering the different status, political will and capabilities of Contracting Parties and possible candidate Countries a flexible approach

to the membership level has to be evaluated.

The reform of ECSEE's institutions is for sure an important step for the Energy Community improvement.

However, it is necessary to consider a process that could affect the Energy Community namely the international crisis between Ukraine and Russia.

It is quite difficult to predict the political developments of the current "match" and whether it could hurt the Energy Community in a long period. However some considerations are already possible.

It is well known that Ukraine is a full-fledged member of the Energy Community and thus the ECSEE is fully involved in the current crisis especially considering the peculiar importance of Ukraine as transit Country.

It is clear that the conflict between Moscow and Kiev is not just related to a territorial dispute or to the annexation request coming from the Russian-orientated part of the Ukrainian population.

Actually, the ongoing conflict is an effect of hidden dynamics touching geopolitical, economical and strategic interests: some of these points are surely involving energy issues and the Energy Community membership of Ukraine.

Actually, Kiev is requested to apply the EU energy legal framework because of its ECSEE membership: it means that any pipelines throughout Ukraine have to follow the European energy infrastructures' regulation.

According to the rules envisaged in the European "Third Energy Package" and applicable in the Ukrainian legal framework, third parties and potential competitors can have access to the Russian pipelines as per regulations on non-discriminatory access, tariffs regulation, effective capacity allocation, reverse flow and competition.

The Russian side feels the Ukraine ECSEE membership and the EU legal *corpus* application as a threat to territorial and pipelines control.

As a matter of fact, Ukraine integration in the European regional networks has brought about a concrete chance in the Ukrainian supply differentiation process.

For instance, it is nowadays possible to import gas from Slovakia, Poland and Hungary thanks to the reverse gas flowing regulation: this

decreased the Russian dependence rate of Kiev¹³.

It is not a case that Moscow persistently solicited Kiev to denounce the association agreement and to leave the Energy Community.

Nevertheless, in the current Ukrainian conditions, the role of the Energy Community could be considered much important than in the past.

Actually, the Ukraine membership is showing its importance as useful tool to resist the Russian pressure beyond the Kiev expectations¹⁴.

The obligations coming from the European legal *corpus* are protecting Kiev against an overly pervasive Russia's influence: in fact, even if partially implemented, the EU values and principles are a barrier against the Russian possibility to completely monopolize the Ukrainian internal market.

The application of UE rules is not a secondary issue for Russia and this is clear reading the protests of the Russian government and its reaction against the European regulation.

For instance, in 2011 European Commission announced an investigation about suspect Gazprom's anticompetitive conduct. As soon as the investigation was opened the President of Russian Federation releases an Executive Decree "*On Measures to protect Russian Federation Interest in Russian Legal Entities' Foreign Economic Activities*" ordering the Russian Companies to not supply information to foreign agencies or authorities without a prior authorization of Russian government.

13. The Ukrainian diversification process is still in progress: a Memorandum of Understanding between Slovakia and Ukraine enabling a larger gas reverse flow (8 billion cubic meter/year) has been signed in April 2014: currently Ukraine can import from Poland and Hungary about 2 billion cubic meter/year. The role of Energy Community in the achievement of the Slovakia/Ukraine M.o.U. has been underlined by European Commissioner Günther Oettinger who said: "*Today's deal marks a milestone. It is a first step for gas flows from Slovakia to Ukraine and strengthens the ties between the EU's energy market and Ukraine. Gas via Slovakia will bring a considerable addition to the volumes that Ukraine can already import from Hungary and Poland. Deliveries from EU Member States offer Ukraine access to gas priced on the basis of fair and transparent principles. It is important in this respect that Ukraine, particularly as a member of the Energy Community, makes swift progress in aligning its legal and regulatory framework with the EU energy legislation. This will increase investor's confidence and help the country to modernize its energy sector.*" http://europa.eu/rapid/press-release_IP-14-487_en.htm

14. The main Ukraine's intention joining the ECSEE was aimed at creating an international support against the South Stream gas pipeline. In fact, the Russian pipeline rationale is to avoid the gas flowing through Ukraine. The idea of Kiev was to cooperate with the Energy Community's Contracting Parties to create political hurdles to the pipeline. Indeed, several ECSEE's Countries signed cooperation agreements with Moscow to support the South Stream project, frustrating the Kiev expectations in ECSEE.

Besides, against the persistent European Commission request to apply the Third Package regulation to new infrastructures like South Stream Pipeline, in May 2014 Russia officially opened a dispute in front of the relevant W.T.O. office.

Secondly, the economic sanctions imposed against Russia by the European Union¹⁵ could open new scenarios where the Energy Community and South East Europe area could gain momentum.

In fact Gazprom, Novatek, Lukoil are involved in very large investment plans based on new upstream infrastructures (pipelines, LNG sites, exploration and new extraction fields).

It is well known that these activities are largely supported by financing and actually, the Russian energy corporate debt towards the Western financing system is equal to 600 billion dollars¹⁶.

It means that the most prominent Russian companies are dependent on the Western credits for new investments and a strict sanction mechanism could create a severe credit crunch.

Actually, a shortage of financing could seriously hurt the Russian development programs: it is important to note that the paramount tool for the Russian hydrocarbons Companies is to hold the monopoly on the infrastructures and territorial control: of course, this requires huge investments in new projects.

Furthermore, in the Russian case, the supremacy of the national Companies on the supply systems goes in parallel with national political and strategic interests since Moscow developed a foreign policy based on “energy international relations”.

Considering this scenario it is clear how it is important the current “match”: besides, it is necessary to underline that the EU sanctions are coming in a very sensitive moment for Russia.

In fact, in the last period the Russian cash flow from hydrocarbons sold in Europe is substantially decreased and then the Russian biggest Companies are living a negative budgetary moment.

Actually, the gas selling agreements usually envisage a “take or pay” clause to guarantee the seller that annual amount of gas will be paid

15. http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm#5

16. Belyi A. “Russian oil and gas in the new international context - sanctions produce effect, political consequences are still uncertain” OGEL review settembre 2014.

even if the buyer will not request the delivery.

Besides, considering these contracts are long-time based (20 year), the selling price is commonly indexed to the oil price trends¹⁷.

The Russian supply agreements with European Countries have been closed on these terms but the “take or pay” clause has been under a big pressure in the latest years and in many case it has been renegotiate or legally challenged.

In fact, the severe economical crisis that affects Europe, the availability of new sources from shale gas and new *spot markets*¹⁸, created a competitive gas selling mechanism.

Because of these dynamics, the Norwegian Company Statoil, one of the largest European suppliers, renegotiated 80% of its EU “take or pay” contracts linking the gas price index to the *spot markets* price’s trends. Thanks to this, Norway was the first EU supplier in 2012 whilst Gazprom selling decreased¹⁹.

The cash flow shortfall, together with EU economic sanctions, could be a real problem considering that the European market is the main source for Russian hydrocarbons Companies. In fact, in order to support the political and strategic positions of the Russian government, the selling price to Russian internal market and to “friend Countries” is very low and not market based.

It is true that recently Russia closed a huge gas supply agreement with China but according to market rumors Moscow will receive a selling price lower than the usual European level²⁰.

Secondly, after the infrastructures building, Russia will handle an awkward client: The Chinese contractual power is obviously bigger than the European²¹ and possible requests of future supply/price re-

17. This mechanism has been strongly criticized by European Commission since it is impeding a “fuel to fuel” competition: Massari S.F. “*Profili contrattuali nel mercato del gas naturale*” Edizioni Accademiche Italiane, 2014.

18. Spot markets are based on an immediate negotiation between demand and offer: as usual the gas spot price is considerably lower than the “take or pay” selling price since directly linked to the market conditions.

19. Dizarevic N. “*Regulatory Aspect Behind a Realization of the South Stream*” Ogel review “*Special on Energy Community*” 2014.

20. Russia will export in China 400 billion cubic meter of gas starting from 2018 <http://fortune.com/2014/06/20/in-china-russia-gas-deal-why-china-wins-more/>

21. The European contractual power is not lower because of the imports amount but since the EU members are usually negotiating individually with Russia.

negotiations are predictable. In that case, considering the current situation on the European side, Russia could be the vulnerable part of the “Chinese deal”.

In this situation, the opening of the South East Energy corridor to carry the Caucasian resources to Europe seems to be pivotal in the EU energy security²².

The South East Europe and the Balkans will be directly involved: Energy Community could be the player able to coordinate the regional Countries to catch the chance to become a central area in the EU diversification and supply security policies²³.

It means for the region a concrete possibility to attract infrastructure investments and, consequently, to improve the regional market.

The European Union could create at the same time a huge area around its border where the European values and legal framework could effectively work: spreading the European *acquis* could be a strong barrier and a useful tool in the geopolitical current match on energy transport.

22. South East Energy Corridor will be opened thanks to the Trans Adriatic Pipeline that will transport the gas from the Azerbaijani extraction fields to South Italy: Massari S.F. “*Trans Adriatic Pipeline: l’apertura del Southern Gas Corridor e i possibili scenari per l’Italia e i Balcani. Un’intervista a Giampaolo Russo Country Manager Italia TAP AG*” Pecob’s Paper Series, January 2014

23. The Energy Community has been several time recognized as strategic by the European Institutions: *Report from the Commission to the European Parliament and the Council under Article 7 of Decision 2006/500/EC*, 10.3.2011, COM(2011) 105 final; “*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on security of energy supply and international cooperation - The EU Energy Policy: Engaging with Partners beyond Our Borders*”, 7.9.2011, COM(2011) 539 final; “*European Parliament, resolution of 23 October 2013 on the European Neighbourhood Policy: towards a strengthening of the partnership. Position of the European Parliament on the 2012 reports*” (2013/2621(RSP)).

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