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New ECIPE Policy Brief:

Europe's energy dependency and Russia's commercial assertiveness: what should the EU do?

Europe is dependent on Russia for its energy supply and finds itself at odds with designing a policy that addresses its rising number of concerns over Russia while not putting its energy imports at risk. Russia's new assertiveness, in energy and as well as in other external relations, has repeatedly led it to bully its trading partners, including the EU. Foreign investors increasingly find Russia an unstable destination for investments, where commercial rule of law still widely remains an alien concept. Trade and investment policies are unclear and subject to unannounced and arbitrary amendments. With power being increasingly concentrated in the Kremlin and around the former President, Vladimir Putin, Russian politics has slithered towards authoritarianism. In this new paper, Fredrik Erixon takes stock of past and future development in Russia and discusses how Europe should design a policy which accommodates its energy supply as well as the interests of European investors in Russia.

Russia's commercial assertiveness is not a self-correcting, temporary phenomenon. The notion of state capitalism has come to the fore of Russian politics and is here to stay for the foreseeable future. Current economic weather conditions might make the Kremlin somewhat more amenable to the concerns of its trading partners, but the forces of state capitalism is strong and Russia's commercial policy is likely to continue on its past track of energy re-nationalizations and bullying of foreign investors and trading partners.

The EU is divided over its approach to Russia and appears highly uncertain about what policies that could improve the current situation, enhance energy security and address the problems European energy investors find in Russia. Negotiations over a new Partnership and Cooperation Agreement will start soon again and is seen as the chief method by the EU to constrain Russia assertiveness. But only a few remain optimistic that a new PCA could provide the security and stability needed for a solid relationship in energy and investment policy. The EU has a long-term interest and responsibility to facilitate a peaceful and prosperous Russia, but it needs to revisit the arguments for new commercial negotiations and establish the institutional conditions needed to improve the commercial relationship.

There are two pieces missing in Europe's commercial-policy approach to Russia. Firstly, the EU needs a much more integrated energy policy, including a single market for gas, which could provide for unity and greater economic efficiency. The current approach allows Russia to play games with Europe as a whole by engaging individual member countries on a preferential basis, clearly to their advantage.

Secondly, the EU needs an in-built legal structure could establish structured procedures for addressing disputes and give investors better certainty. For investments in Russia's energy sector, such a legal structure is provided in some BITs between Russia and individual EU member states.

Furthermore, a pending case related to the Energy Charter Treaty (ECT) is about to bring greater clarity to the extent Russia is actually bound by this treaty. Russia has not ratified the ECT, but the treaty itself clearly demands provisional and full application of the treaty by countries who signed it, which Russia has done. Regardless the outcome of this case, greater legal clarity in Europe's investment relations to Russia is central to reap the potential benefits of closer commercial integration. If Russia is not interested in subjecting an agreement with the EU to stronger legal protection for European investors, then there is hardly a case any longer for Europe to negotiate a new commercial agreement.

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The paper can be downloaded at www.ecipe.org.