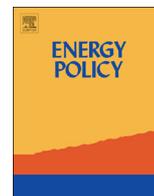




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Russian energy in the EU market: Bolstered institutions and their effects

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HIGHLIGHTS

- EU and Russia developed transgovernmental and transnational energy institutions.
- It allowed them to face energy challenges: depoliticisation and market construction.
- Internal EU and Russian institutions act as constraints.
- Institutions have to marry Russia's state capitalism and EU competitive markets.
- Transgovernmental and transnational institutions are to be further promoted.

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ABSTRACT

The article examines institutional changes in EU–Russian energy relations since 2000. The article explores the ability of transformed institutions to limit the politicisation of energy and to reconcile the EU competitive-market approach with Russian state capitalism. More specifically, the article focuses on changes in intergovernmental, transgovernmental and transnational interactions. The article demonstrates that the gradual strengthening of transgovernmental and transnational institutions has inhibited the politicisation of energy relations and facilitated regulative cooperation between the EU and Russia. However, the potential of shared institutions is constrained by internal institutions on both sides. In Russia, these obstacles are insufficient top-down delegation of responsibilities in the government and its great power aspirations. In the EU, key barriers include inter-institutional rivalries, the EU's propensity to impose its legislation on external partners and the integration of energy policy with foreign policy. The article presents several policy implications. First, it is futile to institutionally impose the regulative paradigm of one partner on the other; rather, mutual dialogue is needed. Thus, institutions should be structured appropriately. Second, current depoliticisation will require the involvement of not only the EU and Russia but also transit countries, such as Ukraine. Third, transgovernmental and transnational cooperation should be nurtured because this is a useful channel for both information exchange and a regulative convergence of policy implementing mechanisms. Finally, this incremental regulative convergence is the only option available today for the EU and Russia; this is also a way to further depoliticise energy relations.

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1. Introduction

Located between the European and Asian markets, Russia regards both markets as export destinations for its hydrocarbons. Relations with Western neighbours have a longer history and are more institutionalised. According to recent data, over 50% of Russia's natural gas and approximately two-thirds of its oil exports

go to the EU; the EU receives approximately 30% of its hydrocarbon imports from Russia (Russia and EU, 2014). At the same time, Moscow plans to decrease its exports to the EU in favour of Asia (see Shadrina, 2014).

The main goal of this article is to assess whether institutional changes allow the EU and Russia to face two challenges in their energy relations. The first challenge is to limit the politicisation of energy trade and investment. The second challenge is to enable the regulative convergence that is essential for the EU and Russia to become components 'of a common, subcontinent wide, energy market' as described in the Roadmap for EU–Russian energy cooperation to 2050 (Russia and EU, 2013, 5). Even limited

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regulative convergence is problematic because the EU puts liberalisation and competitive markets at the centre of its energy regulation, whereas Russia believes in state capitalism (the state manages the economy in a market manner and owns substantial shares in large companies). Both depoliticisation and the construction of an EU–Russian common energy market will, however, enhance energy security in Europe. For the EU, a common energy market will increase the security of supply, whereas Russia will benefit from the security of demand in its main export markets. In economic terms, a common energy market will mean lower transaction costs and the elimination of several current governmental failures.

Three different levels of international institutions are identified in EU–Russian energy relations for the purpose of this analysis: intergovernmental (involving top officials), transgovernmental (concerning low level officials), and transnational (regarding businesses, NGOs and epistemic communities). The institutionalist literature assumes that the greater the cooperation at the transgovernmental and transnational levels, the smaller the chance that issues are held hostage to intergovernmental stalemates. Therefore, the research question is whether the strengthening of EU–Russian transgovernmental and transnational energy institutions has reduced politicisation and facilitated regulative coordination. If this situation has not occurred, what has obstructed it? By examining the evolution of EU–Russian institutions, the article will answer whether institutions support Russia and the EU in addressing the two challenges.

The year 2000 is a starting point for this study. The Partnership and Cooperation Agreement (PCA), which regulates EU–Russian relations (Russia and EU, 1997), was very concise regarding energy, referring to the Energy Charter and its Treaty (ECT) that Russia has never ratified. Moscow and Brussels only devised an instrument of energy policy coordination in October 2000 when they established the Energy Dialogue (ED). Moreover, with the arrival of Vladimir Putin to the presidency in 2000, Moscow began a gradual move away from the liberal views of the 1990s towards state capitalism. Meanwhile, Russia became more assertive in defending its specific views, including energy, which complicated its relations with the EU. Finally, the EU produced a Green Paper regarding energy security for the first time in November 2000; it outlined the EU's goals and means of energy interaction with third parties. The year 2000 was pivotal for EU–Russian energy relations. Although the ED is the key focus, the article also briefly examines the ECT and its fate because it is an important forerunner of the ED.

The empirical findings of the article demonstrate that EU–Russian energy institutions are more nuanced than is usually believed. Russia prefers institutions that do not impose competitive-market paradigms on it. However, these bodies are not simply creating order but also decreasing transaction costs. Furthermore, the article demonstrates that the growth of transgovernmental and transnational structures under the auspices of the ED allowed some depoliticisation. Their work also ensures the improvement of the EU's and Russia's approaches to market regulation at the level of implementation. These positive developments are, however, constrained by internal institutions in both Russia and the EU. The depoliticisation effect has also been limited because transit countries were not included in the ED. Finally, by demonstrating how the ED has gradually developed, the article also contributes empirically to the rational institutionalist discussion regarding how institutions emerge.

The article begins with the theoretical framework. Departing from rational choice institutionalism, it defines intergovernmental, transgovernmental and transnational relations; relevant institutions; and the sources of their analysis. The article then examines how EU–Russian energy institutions have evolved. The nature of EU–Russian energy institutions' diversification is discussed in the

fourth section. The article also addresses institutions that constrain the ED. The article concludes by summarizing the results and exploring their policy implications.

2. Materials and method—From intergovernmental to transgovernmental and transnational institutions?

Institutions are understood in this article as formal (including formal regulations and rules and formal organisations) and informal (see Aalto, 2014). Informal organisations are defined as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels” (Helmke and Levitsky, 2004, 727). This article adopts the perspective of rational choice institutionalism (Williamson, 1985; DiMaggio and Powell, 1991; Shepsle, 2006). Although there is a tendency to identify it as a separate type, international institutionalism is an application ‘of institutional logics to particular settings’ (Peters, 2000, 2). International institutions are sometimes even more rationally created than other institutions (Peters, 2012, 160–161, 168).

Accordingly, the preferences of actors are shaped exogenously, and institutions are established in line with these preferences (Hall and Taylor, 1996). In our case, Russia's position is predefined by its role as a supplier (wanting to have stable markets) and by its determination to preserve sovereignty over resources and its state capitalist system. The state owns 50.002% of Gazprom and 69.51% of Rosneft, the two key Russian gas and oil companies. Moreover, Russian legislation provides benefits to state companies in exploration and export (particularly, Gazprom). The EU, by contrast, is an importer that chooses liberalised energy markets and competition. Thus, the two adhere to different paradigms (see also Goldthau, 2012; Kuzemko, 2014). To use the terminology of this special issue, the parties subscribe to different derivatives of energy trade: competitive markets in the EU and state capitalism in Russia (see Aalto, 2014).

However, both Russia and the EU are interested in establishing joint institutions to decrease the transaction costs of trade and investments and to create order (see also Aalto, 2014). Institutions should improve the reciprocal transparency of Moscow and Brussels regarding regulation and policy-making and to facilitate problem-solving. As a result, institutions could limit the politicisation of energy relations and create a favourable environment for a convergence of rules.

Politicisation is a complex phenomenon that lacks any single definition. Politicisation is understood here as addressing energy trade, investment and infrastructure through economic and (geo) political logics (and can also be conceptualised as a government failure). Russia is frequently reproached for the politicisation of its supply, as reflected in the price differences in long-term contracts, chaotic provisions of price reductions and efforts to design methods of bypassing infrastructure (Ortung and Øverland, 2011). This politicisation can mainly be diagnosed in Russia's relations with post-Soviet countries (to which the EU reacts). The EU also politicises energy relations, which is evident from its desire to diversify away from cheap Russian gas to more expensive shale gas/LNG. This politicisation is also evident in the EU's recent withdrawal of all contacts with Russia because of the 2014 events in Ukraine. Therefore, the present article treats politicisation as a complex phenomenon, which characterises the behaviour of both Russia and the EU.

Three levels of institutions can be identified in international relations. First, the intergovernmental level comprises high-level interactions, i.e., among heads of state, governments and ministers who can legally commit their countries. The advantage of this level is having prominent figures involved, which sends a strong

political signal. However, intergovernmental relations do not guarantee successful cooperation. Important leaders' knowledge regarding a specific issue is often limited. Moreover, various problems are frequently grouped in package deals. Once a summit is over, an issue can be forgotten.

In their ground-breaking work, [Nye and Keohane \(1971\)](#), [Keohane and Nye \(1974\)](#) argued that interactions that take place beyond the intergovernmental level must be considered. Transgovernmental relations describe 'direct interactions among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those governments' (1974, 43). These sub-units of government facilitate information exchange across borders, enhance harmonisation of regulation, enforce approved decisions and control implementation ([Raustiala, 2002](#); [Slaughter, 2004](#)).

Third, the transnational level of institutions comprises non-state actors ([Risse, 2002](#)). Initially, transnational companies challenged the ability of the state to conduct independent policies ([Vernon, 1968](#); [Strange, 1996](#)). In the 1980s, various NGOs became a component of transnational relations ([Kelly, 2007](#)). Currently, epistemic communities form an integral part of transnational institutions ([Haas, 1992](#), 3). Epistemic communities can be a component of transgovernmental networks, but because many of them insist on their expert impartiality, they are better conceptualised as transnational. Business and epistemic communities are relevant to this analysis because NGOs mostly have been kept out of EU–Russian energy institutions.

The theoretical writings of [Haas \(1992\)](#), [Keohane and Nye \(1974\)](#), [Raustiala \(2002\)](#) and [Slaughter \(2004\)](#) show that the more regular and more stable transgovernmental and transnational institutions are, the closer the relations between respective countries. Even if participants start from varying positions, these institutions facilitate consensus because they are expert-driven and compromise-oriented. Transgovernmental and transnational institutions also blur the boundaries among states and constrain and condition intergovernmental interaction. Finally, transgovernmental and transnational structures depoliticise cooperation because most issues are solved at the technical level and regular contacts provide a venue for increased mutual understanding. The EU is the best example of the density that can be achieved at the transgovernmental and transnational levels. Similarly, the EU's relations with outsiders can be measured against this standard ([Pollack and Shaffer, 2001](#)).

Does this structure apply to EU–Russia energy relations? Have the EU and Russia developed transgovernmental and transnational institutions to the extent that the transnational institutions depoliticise energy relations and facilitate rule convergence, irrespective of the two partner's different regulative paradigms? If yes, what factors facilitate energy relations and what factors frustrate them? To answer these questions, the next section looks at the ECT, the summits' conclusions, official documents of the ED (i.e., progress reports, technical studies), and documents of related transnational bodies. The frequency of the meetings and the scope of the discussions and their impact are traced. The findings are then discussed in [Section 4](#).

3. Results: EU–Russian energy institutions are increasingly diversified

3.1. Energy charter and its treaty

Until the early 1990s, energy cooperation between Europe and Russia was limited to intergovernmental deals that were the basis of long-term contracts between gas companies in respective European states and the Soviet Ministry of Gas (later transformed

into Gazprom). On paper, these contracts looked like business relations, but ministries of energy were closely involved in negotiating the deals. The most controversial issues were also resolved with the help of governmental authorities. As a result, transnational institutions could not exert any pressure on intergovernmental bodies and practices.

The situation began to change in the early 1990s because the EU accelerated the creation of a liberalised energy market that challenged the authority of national governments. The process was initiated by directives but gradually led to changes in the EU's basic treaties, with many energy competences transferred to the EU level. Furthermore, the liberalisation of the energy market meant a complete restructuring of energy relations, including relations with external suppliers. Designing a policy dialogue with Russia at the EU level, therefore, appeared to be logical.

Energy relations between the EU and Russia during this period were largely defined by two types of institutions: the Energy Charter and its Treaty and the ED. The PCA only referred to energy in articles 65 and 105 ([Russia and EU, 1997](#)), citing the 1990 Energy Charter and its 1994 Treaty as central for regulating energy relations (the ECT was developed in parallel to the PCA). The ED was developed in 2000.

The difference between the two institutions is significant. The ECT was the product of the early 1990s, when Russia subscribed to liberal market ideology. The ECT was also patterned after the EU's legislation of the early 1990s. The ED, by contrast, appeared when Russia slowly started to turn towards state capitalism; it stresses the equality of partners and their legislation rather than convergence towards one single model. The ECT is a multilateral regulation whereas the ED is designed specifically for the EU and Russia and is a forum to exchange information and solve difficulties in relations. The ECT is binding, provided that it is ratified, whereas the ED does not restrict the partners in any way. Finally, the ECT is an institution that facilitates trade and investments, whereas the ED started as an institution of energy diplomacy ([Aalto, 2014](#)).

Both the charter and its treaty were classical intergovernmental instruments. The ECT contained provisions regarding trade, investment, transit and energy efficiency. However, the ECT's most important element is the dispute settlement mechanism for investors and participating states (ECT's articles 26 and 27). Unfortunately, the ECT failed to mediate the 2006 and 2009 crises between Ukraine and Russia. Because of payment arrears, Gazprom stopped supplying gas to Naftogas (Ukrainian gas company) for Ukrainian domestic needs, which, in turn, stopped gas transit to Europe. On both occasions, Ukraine ignored the Charter Secretariat's warnings and offers to mediate, despite Ukraine being a full ECT member. No other ECT member called for the use of the ECT (see more in [Pirani et al., 2009](#); regarding the ECT see also [Konoplyanik, 2011](#); [Selivanova, 2012](#)).

The key body of the ECT, the Energy Charter Conference, is intergovernmental; it is a regular meeting of its member states. However, the ECT also established The Secretariat, which is responsible for the day-to-day work of this institution. Furthermore, the ECT gradually established 'subsidiary bodies' for expert preparatory work and monitoring and assisting in the implementation of the ECT and peer pressure. These subsidiary bodies are the Trade and Transit Group, Investment Group, Working Group on Energy Efficiency, Budget Committee, and Legal Advisory Committee. Finally, in 2009, a Strategy Group was established to discuss strategies, policies and challenges in energy cooperation. The Group is also the central element of the discussion regarding the ECT's modernisation. Therefore, under the auspices of the Secretariat, some transgovernmental cooperation has been promoted.

Finally, the ECT also created the Industry Advisory Panel (IAP) in 2004, which allows business representatives to express their

opinions regarding the ECT and its application. The IAP meets three times a year and prepares a Communication to the Conference that mostly contains an inventory of issues discussed by the IAP. The IAP offers little policy advice or lobbying; however, it is still an example of transnational cooperation promoted specifically by the ECT.

Initially, Russia signed all of the provisions of the ECT—a logical step, given that in the 1990s Russia supported the liberal, market-oriented paradigm. However, domestic politics prevented Russia from ratifying the ECT during this period. Following the 1993 Constitutional Crisis, the competences of the Russian Parliament were severely curtailed. Blocking international agreements (including the ECT) became virtually the only way for the legislative branch to express its opposition to the Government (Trenin and Lo, 2005).

The story changed after 2000. The Duma gradually became more cooperative. However, the gradual change from the liberal paradigm to state capitalism meant that Russia had new reasons to oppose the ECT. First, Moscow was concerned that the ECT would force it to open its pipelines for natural gas transit from Central Asia or that it would be forced to accept the construction of new transit pipelines across its territory. Both options meant a challenge to Gazprom (by 2004 the state regained control of the company, which it had temporarily lost in the 1990s). Second, following the 2006 and particularly the 2009 Ukrainian gas transit crisis, Russia criticised the ECT for its inability to prevent the violation of its provisions by a full member (Ukraine). Combined with the EU's attempts to exclude the application of certain ECT provisions regarding its territory because of regional integration (Konoplyanik, 2011), these actions increased the fears in Moscow that the ECT was meant only to constrain Russia and no other actor. Finally, Russia was concerned regarding the possibility of foreign investors suing it for violation of their rights.

The eventual July 2009 decision to stop the ECT's provisional application was caused precisely by lawsuits from foreign investors, specifically the case of Yukos. This decision was incorrect because Russia remains liable until 2029 for the mistreatment of any investments that were made before October 2009. Curiously, the Ministry of Energy was against the withdrawal of the provisional application.¹ However, the eventual decision was made by the Government Commission on Fuel and Energy Complex and Replenishment of Mineral Resources chaired by then Prime Minister Putin.

Meanwhile, Russia proposed several alternatives to the ECT. The April 2009, Conceptual Approach was devoted mostly to transit (Russia, 2009b). The Draft Treaty on Ensuring International Energy Security, which was leaked later in 2009, was more comprehensive and combined Russia's insistence regarding sovereignty over resources and other elements of state control with provisions of the ECT (Russia, 2009a). These initiatives were ignored in Europe. However, these alternatives demonstrate that it was not the binding character of the ECT but its effect on Russian sovereignty and the idea of liberalised access to transportation that turned Russia away from the ECT.

Significantly, Russia (represented by the Ministry of Energy) continues to participate in all of the meetings of the ECT subsidiary bodies. Moscow also recently paid all its membership fees for 2008–2009 and is at the time of writing discussing the payment for 2010–2013. Russian companies also participate in the IAP. The only institutional sign of Russia being absent from the ECT is the Deputy Secretary General, whose position has always been reserved for Russia and is currently labelled 'temporarily vacant'.

Although there is no intention to return to the ratification of the ECT and to intergovernmental cooperation within it, Moscow values the transnational and transgovernmental cooperation that has been achieved. At the very least, the Ministry of Energy is determined to preserve this line of communication. As a result, in relations between the EU and Russia, the ECT has been transformed from a forum which governs trade through binding regulations to a forum that facilitates policy-coordination and therefore contributes to creating order. This development seems appropriate, given the present divergence of energy regulation paradigms in the EU and Russia. Whether this development will be productive remains to be seen.

3.2. Energy dialogue

The launch of the EU–Russian ED in October 2000 (Russia and EU, 2000) sought to remedy the lacuna that emerged because of Russia's non-ratification of the ECT. The ED was also a sign of recognition of the growing authority of the EU in energy policy-making. However, the Dialogue was not a substitute for but a complement to the ECT, becoming an arena for quick problem-resolution.

The Dialogue, as shaped in 2001, was mostly limited to two coordinators. The Russian position, for a long period of time, belonged to the Deputy Prime-Minister, Victor Khristenko, whereas the EU was represented by the Director General of the Commission, Francois Lamoureux. Despite Lamoureux being a top official rather than a politician, the Dialogue acquired an intergovernmental character during subsequent years. (Currently the position of coordinator is connected to official posts: in Russia it is the Minister of Energy, whereas the EU is represented by its Commissioner for Energy.) The coordinators regularly reported to EU–Russian summits and to occasional EU–Russian Cooperation Councils (Permanent Partnership Council as of 2003). However, the coordinators rarely saw one another, and all documents were prepared on the eve of their meetings. No regular cooperation was initially established.

Two sets of temporary working groups were formed, one in 2001 (to develop the agenda of the Dialogue) and the other in 2005 (to upgrade it). Both sets of groups involved officials from the EU, its member states and Russia, and representatives of business and academia. The 2005 upgrade was initiated by the EU–Russian Roundtable of Industrialists (a body that brings together CEOs of various EU and Russian companies) and thus had a larger business representation. However, the mandates of both sets of groups were strictly limited in time.

Transgovernmental and transnational institutions, however, gradually emerged in the ED. First, Russia and the EU established secretariats to provide administrative and intellectual support to the ED coordinators. Second, several workshops were conducted to compare Russia's 2003 Energy Strategy with the EU's 2000 Green Paper regarding energy security and therefore to raise awareness of energy thinking on both sides. Third, the parties established an EU–Russian Energy Technology Centre that was to connect high-level discussions with down-to-earth business projects, particularly related to energy efficiency and renewable energy sources. These early transgovernmental and transnational contacts lacked consistency. As a result, their strength and capacity to influence intergovernmental institutions remained limited. Business continued to rely on their respective public authorities to defend their interests. For example, talks regarding the future of long-term contracts, challenged by the EU's liberalisation, mostly took place among public authorities. EU companies and Gazprom remained on the sidelines.

The 2006 Ukrainian crisis served as a catalyst for institutional changes. Weak EU–Russian bilateral structures that existed at the

¹ An anonymous interview with an official from The Russian Ministry of Energy (2014).

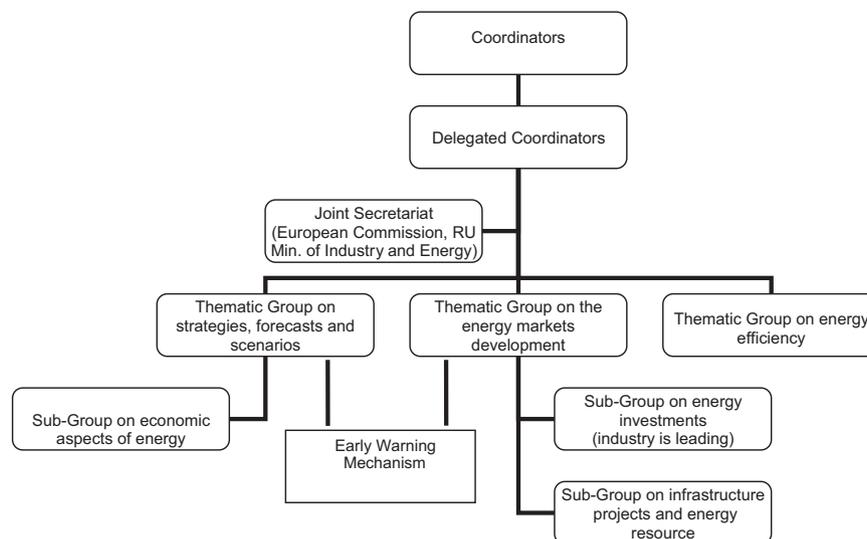


Fig. 1. The structure of the EU–Russian energy dialogue 2007–2011 (Author's illustration, based on the structure, provided in [Russia and EU \(2010\)](#)).

time could not prevent the crisis because high-level discussions were slow to act and the termination of transit surprised both sides. Moreover, Russia did not expect that it would take all of the blame (because Russia's actions were perceived in the West as pressure on the new democratic administration in Kiev). With Gazprom being accused of failing to honour its long-term contracts with European companies that received gas at the Western border of Ukraine, Russia sought to remedy its reputational damage. Moscow and Brussels also sought instruments to avoid a supply crisis in the future and therefore agreed to establish a red phone (a line of crisis communication between senior officials from both sides involved in the ED).

Furthermore, the two coordinators reshuffled the ED's structure in 2006 and established three permanent thematic groups (see Fig. 1). These groups, consisting of medium- and low-level officials from both sides, were granted a permanent status in the ED, regular meetings and terms of reference. The groups became forums for regular exchanges of information regarding regulation and policy measures in the EU and Russia ([Russia and EU, 2007a, 2007b](#)). Although they did not suggest anything innovative, the groups sought to increase the transparency of the two partners to one another and, therefore, to decrease transaction costs and limit government failures. As a result, the ED's regular progress reports became more forward looking, attempting to coordinate energy planning on both sides. Representatives of business were also involved in the thematic groups. On its official website, the Russian Ministry of Energy describes these thematic groups as a dialogue between officials and business representatives ([Russian Ministry of Energy, 2014](#)).

From 2006 to 2007 the groups began regular cooperation, developing a culture of consultation. The ED's maturity became obvious in September 2008 when, following the Russian–Georgian war, the EU suspended most discussions with Russia. However, expert consultations and information exchanges continued and cushioned the lack of high-level contacts until official relations warmed in November 2008.² Thus, augmented transgovernmental institutions proved to be capable of limiting the politicisation of energy relations.

Contacts among business representatives also deepened. These contacts mostly took the form of bilateral contacts between companies, with consultations becoming more frequent following

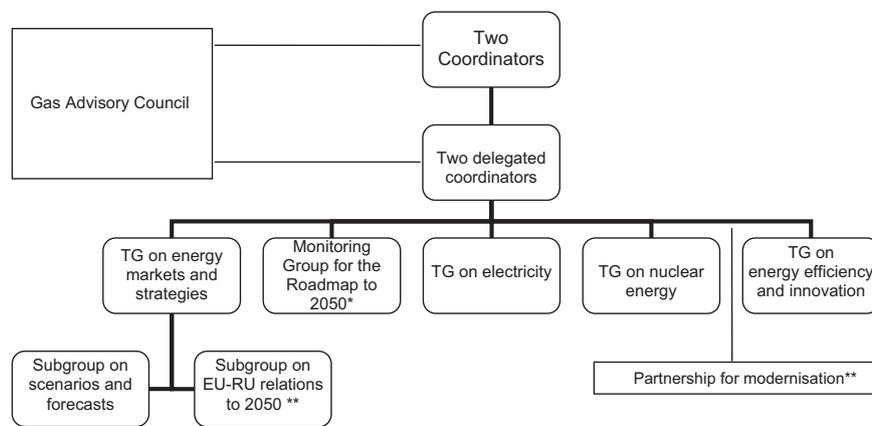
the launch of the third liberalisation package for electricity and gas in 2007. Companies on both sides sought ways to preserve long-term contracts for gas supply, which were challenged by the package. Meanwhile, multilateral contacts were established between Eurogas, an association of the EU's gas industry, and the Russian Gas Society as well as between Eurelectric, an association of European power industries, and the CIS Electric Power Council. Progress regarding the EU's gas and electricity liberalisation thus served as an impetus for the development of transnational relations.

These institutional changes, however, did not stop the 2009 Ukrainian transit crisis, which was similar to 2006 events, nor did they prevent the reputational losses of Gazprom or the politicisation of EU–Russian energy relations. One reason for these failures was that there was no institution for crisis-management at the transgovernmental level; the 2006 solution was limited to a direct phone line between two senior officials. Another reason was the attitude of the EU. Despite repeated warnings from Gazprom, the Commission insisted that it was Russia's and Ukraine's problem and they were responsible for ensuring that gas was delivered to European partners. Russia again was portrayed in the EU as putting economic and political pressure on Ukraine. (The Russian argument was that it finally moved market relations in trade with Ukraine because there was no longer any political reason to subsidise the new government.)

However, the complete interruption of supply to European customers through Ukraine from 7 to 20 January 2009 made it obvious that any future conflict between Russia and Ukraine would affect the EU and therefore would require EU involvement. Thus, the need for further changes became obvious. First, the EU and Russia established a new crisis mechanism, clearly outlining the modalities of the Early Warning System and the procedure that they would follow in case of crisis ([Russia and EU, 2009](#)). This new instrument was meant to address government failure, and it presupposed procedures for the involvement of independent experts (the transnational level).

The 2009 crisis also initiated a new round of institutional reform that was made public in 2010 (see Fig. 2). The group on energy markets was replaced by the thematic groups on electricity and nuclear energy. This signified a desire to move beyond the simplistic trade in hydrocarbons to more processed energy goods. Oil and gas businesses were excluded (although a representative of Transneft, a Russian oil transportation company, received a chair in the thematic group on energy strategies). The Dialogue also

² An interview with a Commission official.



* The block of the illustration was added in 2014

** The block of the illustration was removed in 2014

Fig. 2. The structure of the EU–Russian energy dialogue 2011–present (Sources: Russia and EU (2011a), The Russian Ministry of Energy (2014)).

referenced the 2010 Partnership for Modernisation, which was designed to facilitate the transformation of Russia from a resource-based to an innovation economy (making the focus on electricity and nuclear energy a logical development). The thematic groups were further strengthened, and their status reached its zenith in 2014 when they were recognised as ‘the main mechanism of the Dialogue’ (Russia and EU, 2014). However, these thematic groups mostly remained forums for information exchange.

The parties also initiated informal consultations between EU energy regulators and Russian experts in 2010. Although outside of the Dialogue per se, these consultations bolstered EU–Russian transgovernmental institutions, providing yet another framework for medium-level officials on both sides to discuss issues of mutual interest. As a result, the 2014 progress report called for systemic cooperation between regulators, including the European Agency of Energy Regulators (Russia and EU, 2014).

Finally, in 2011, the parties signed memoranda that upgraded the Early Warning Mechanism and established a regular exchange of information (Russia and EU, 2011b, 2011c). The regular exchange of information was meant to coordinate forecasts from both sides regarding demand and supply. These decisions further improved transgovernmental institutions, providing them with more responsibilities and reasons to interact more frequently.

The ED structure has been slightly revised since then. The Thematic Group regarding the preparation of the Roadmap to 2050 was transformed into the Group regarding its monitoring. The decreased significance of the Partnership for Modernisation resulted in its removal from the institutional map of the Dialogue. On paper, the Dialogue merited a stable transgovernmental layer that proved its viability concerning information exchange.

Transnational contacts were mainly developed by large gas companies. Electricity corporations were less involved because the synchronisation of electricity grids was postponed. However, the Roadmap to 2050 presupposes the expanding of technical contacts between the Russian system operator, the Russian Federal Network Company, and the EU’s association of system operators (ENTSO-E).

The most interesting development, however, came from the Gas Advisory Council (Russia and EU, 2011d). Established in 2011, the Council consists of independent experts, business representatives and public officials from both sides (in roughly even proportions³).

The Council was established on the suggestion of the Russian Ministry of Energy⁴ as a discussion forum and a preparatory body for ED coordinators (Russia and EU, 2011d). The Council filled the vacuum that emerged when thematic groups were refocused towards electricity and nuclear energy. The Council also provided a venue for enhanced experts’ involvement because it was chaired by Jonathan Stern and Vladimir Feigin, two prominent gas experts.

Because of the enthusiasm of its participants, the Council immediately surpassed its mandate. The Council established three work groups (on energy scenarios and forecasts, regulation of internal energy market and development of gas infrastructure). The first group attempted to coordinate the prognosis for both sides and concluded that the EU’s gas demand would be stable until 2030. This group also concentrated on various price mechanisms for gas contracts. The two other groups concentrated on the third liberalisation package and its effects. Instead of restating the EU’s arguments and Russia’s opposition to them, however, the Council started work on technical issues (network codes and framework guidelines) to discover ways to bring together the EU’s and Russia’s systems of regulation at the level of implementation. For example, the Council proved that delivery points established in current long-term contracts could be preserved. The Council also proved that a gas dispatching service that would guarantee the equal use of various pipeline routes did not contradict the third package. The Council also pressed for the development of a special code for new external pipelines to the EU (Gas Advisory Council, 2013). Therefore, the Council moved beyond information sharing to limited legal convergence.

The achievements of the Gas Advisory Council were mainly because of the culture, which was established from the very beginning, of a more cooperative and technical approach. This approach focused on the basics of implementation of the third package while considering Russian concerns. A simple restating of the EU and Russian positions did not lead anywhere. The work of the Council has also been facilitated by the fact that most secondary documents for the third package are still in preparation and therefore can be influenced. The results of the Council’s work have been provided to the most recent ED progress report (Russia and EU, 2014) and to the Roadmap to 2050 (Russia and EU,

³ The membership varies from one meeting to the next.

⁴ Interviews with Russian participants of the Gas Advisory Council.

2013). Therefore, the activity of epistemic communities, which are most active in the Council, is legitimised by the ED coordinators.

The 2010s has witnessed an unprecedented strengthening of transgovernmental and transnational institutions. Whether these institutions addressed the two challenges of EU–Russian relations – their depoliticisation and regulative convergence – and therefore how effective they have been is discussed in the next section.

4. Discussion

4.1. What does the evolution of EU–Russian energy institutions reveal?

The role of EU–Russian energy institutions is more intricate than it is normally portrayed. Both the ECT and ED institutions deliver results. However, both cases demonstrate that Russia has preferred policy discussion forums to legally binding institutions. A conventional explanation would be that Russia does not want to constrain itself. However, this explanation does not explain why Russia has proposed that a legally binding treaty replace the ECT (Russia, 2009b) or why it used the WTO, where it has already sued the EU twice (for energy corrections and the third liberalisation package). Moreover, Gazprom has extensively used arbitration procedures with various partners on its own initiative and as a defendant (ITAR-TASS, 2014).

Russia rejects the ECT not because it is binding, but rather because it is perceived as imposing a paradigm that runs counter to the Russian state capitalist vision. This “imposition” also runs against another key premise of current Russian foreign policy, which is equality with key global players. The rejection of the ECT is a conflict between different derivatives of trade institutions. The history of the ECT shows that EU–Russian energy institutions have failed to impose another paradigm of state regulation on Russia. The ED, by contrast, has not attempted this imposition and as a result, has flourished. Russia's negative attitude to the EU's Energy Community Treaty (European Community et al., 2005) is explained by the same logics.

Currently, a diversity of views regarding energy regulation exists in Russia. The Ministry of Energy argues for work on technicalities and mutual convergence, and Gazprom, backed by the Presidential Administration and the Ministry of Foreign Affairs, seeks special status. This diversity and the refusal of the EU to consider an alternative to the ECT indicate that legally non-binding institutions are likely the only medium-term solution for the EU and Russia. Progress can be made, however, in the process of ECT modernisation initiated in 2009.

Furthermore, both the ECT and, particularly, the ED have demonstrated that intergovernmental relations have been augmented with transgovernmental and transnational relations. Transgovernmental and transnational relations have gradually strengthened because meetings have been more frequent and regular. Initially, both actors tried to constrain them. Russia's attitude was largely caused by the specificity of its political system (see Section 4.2). For the EU, member states delayed further development because they were wary of too large a transfer of responsibilities to the EU.

However, both sides had to agree to bolster interaction at the transgovernmental and transnational levels in response to crises and external pressure. This process has never been linear. In the ECT, this process occurred first at the start of its operation and later as a response to the need to modernise the ECT (following Russia's withdrawal from the ECT's provisional application). In the ED, the strengthening of transgovernmental and transnational institutions occurred in two waves (2006–2007 and 2009–2011), provoked by problems of transit through Ukraine. Therefore, the

resulting changes have been reactive rather than proactive. These findings can contribute empirically to the rational institutionalist discussions regarding how new institutions emerge and answer the criticism of rational institutionalism's insufficient ability to explain how institutions are created (Peters, 2012, 60).

The work and the agenda of the ECT and the ED have evolved. By refusing to ratify the ECT while at the same time continuing to participate in its transgovernmental work, Russia has effectively transformed the ECT into a policy-discussion forum. The diversification of the ED has meant that it has gradually moved from declarations to enhanced information exchange and finally regulative convergence, which was achieved by the Gas Advisory Council. There is a growing convergence in how the ECT and the ED are used in EU–Russian energy relations. Both institutions balance between cost reduction and order creating functions. This hybrid phenomenon is logical because the EU and Russia are characterised by different regulative paradigms.

The depoliticisation efforts of the Gas Advisory Council, which drove the most recent strengthening of transnational relations, brought results regarding the third liberalisation package. This labourious work considered Russian interests at the implementation phase. Furthermore, the comparison of various scenarios and their drivers allowed a convergence in strategic planning, which was reflected in the EU–Russian Energy Roadmap to 2050. The interest of the Russian Presidential Commission on Energy in the work of the Council⁵ is indicative of the Council's successes; this interest potentially opens a possibility for greater coherence in Russian external energy policy (see also Section 4.2).

The strengthening of transgovernmental and transnational institutions has had a limited effect on depoliticisation because the causes of energy politicisation on both sides have been different. The EU politicised relations in response to what it perceived to be Russia's manipulation of energy prices on neighbouring countries, such as Ukraine. Russia, for its part, perceived politicisation in the EU's efforts to diversify away from Russian supplies and in the application of the third package. The non-involvement of Ukraine in relevant discussions also played a role. Finally, the EU's decision to stop all consultations (including at the transgovernmental and transnational levels) following the 2014 Ukrainian events indicated that the created institutions could not improve relations. Despite the profound institutional changes, EU–Russian relations have remained vulnerable to politicisation during times of acute crises.

Finally, Peter Hall suggests three ‘variables’ of policy convergence: ‘the overarching goals that guide policy in a particular field, the techniques or policy instruments used to attain those goals, and the precise settings of these instruments’ (Hall, 1993, 279). What we observe in the Gas Advisory Council's input to the ED is policy convergence of the third type: the precise setting of instruments. Thus, transgovernmental and transnational institutions were significant for finding EU–Russian policy convergence and following it. Recognizing numerous differences, the EU and Russia adopted the tactics of small, incremental changes. This approach can be criticised for its modesty, but it is the only approach available when the regulative paradigms of the EU and Russia are so different.

4.2. Are there constraints for shared institutions?

The evolution of EU–Russian energy institutions since 2000 has been overall positive for addressing the two challenges of EU–Russian energy relations—depoliticisation of the dialogue and construction of a common market. However, the results that have been achieved are limited. The main reason is not in the structure of formal bilateral institutions but in formal and informal institutions on both sides,

⁵ An interview with a member of the Gas Advisory Council.

which 'compete' (Helmke and Levitsky, 2004) with bilateral structures and processes.

On the Russian side, two competing institutions must be mentioned. The first is the specificity of the political and administrative system where the de-facto delegation of responsibilities from top to medium- and low-level officials is limited. This is particularly the case with energy, which is a field of immediate attention and interest to Vladimir Putin. His personality is more important than the position he occupies. This importance is well illustrated by the Government Commission on Fuel and Energy Complex and Replenishment of Mineral Resources, which was made redundant following the establishment of the Presidential Commission on Energy in June 2012 once Vladimir Putin returned to the Kremlin. When the highest leader maintains an active prerogative, officials at lower levels have little flexibility in designing (or even implementing) energy policy.

Although the Presidential Commission only has a consultative status, major decisions are made there. Under these circumstances, the competencies of the Ministry of Energy are in most cases limited to the execution of decisions. Therefore, the ED, where Russia is represented by the Ministry of Energy, also suffers. Furthermore, all major hydrocarbon companies participate in the Presidential Commission. This alliance of public and private authorities effectively limits the potential of independent transnational institutions to exert pressure on intergovernmental and transgovernmental institutions. This informal management also explains the lack of interest in transnational organizations that is demonstrated by Russian companies.

However, the recent interest of the Presidential Commission in the Gas Advisory Council⁶ demonstrates that at a time of crisis, technocratic transnational bodies can obtain influence and potentially drive change in the agenda of the Presidential Commission. This influence leads to more coherence in Russia's external energy policy (which is a better synthesis of the technocratic approach of the Ministry of Energy and the political management of the Presidential Commission).

The second Russian institution that works against the ED is informal, it is the starting premise of both Russian foreign policy and Gazprom. Russian foreign policy documents (see, in particular, Russia, 2013) emphasise Russia's wish to be an equal partner to major powers and deserving of special treatment. Similarly, numerous statements by Gazprom's officials emphasise its particular role in gas supply to Europe. The underlying idea is that Gazprom deserves special treatment in the EU market, including the third liberalisation package. The Kremlin's backing of Gazprom makes it an even more difficult negotiation partner, even within the framework of the Gas Advisory Council.⁷

The EU's informal institutions, which have constrained the potential of EU–Russian formal institutions, are different. The first informal institution originated in the complexity of the EU's system that results in the lack of coordination among its various bodies. Gas pricing presents a recent illustration. For example, the DG Competition of the Commission pursues a case against Gazprom, which involves abusive pricing in long-term contracts (see for more details European Commission, 2012). To the contrary, the DG Trade uses the very same price as fair to prove that chemical and metal exports from Russia dumps the EU's production (Council 2008, 2012). This conclusion was confirmed by judicial decisions (General Court, 2013a, 2013b, 2013c, 2013d). EU institutions clearly diverge in how they treat Russian gas pricing.

The contradictory character of transgovernmental institutions is not unusual. If anything, the contradiction is proof of the democratic establishment (Keohane and Nye, 1974, 49). However,

the contradictory character is a drawback for EU–Russian energy relations where transgovernmental institutions are still weak and their development depends on their ability to provide solid expert support and pressure on intergovernmental discussions. The EU's ambiguity also challenges its credibility as a Russian counterpart and the ability of the ED to deliver results.

Second, the EU's inclination to project its legislation and policy solutions on its partners should be mentioned. This informal institution has developed in the context of the EU's enlargement and development policies. Brussels' belief that its solutions are best reinforces this attitude. However, this imposing attitude is problematic in relations with Russia because it runs against Moscow's intention to construct equal relations with international partners. Moreover, the EU's methods are not necessarily the best practices. Rather, they reflect compromise among member states. In discussions regarding regulative convergence, especially at the level of coordinators and thematic groups, EU bodies and representatives have insisted on the benefits of liberalisation. Although the EU and Russia currently have agreed within the Gas Advisory Council regarding the need to converge specific policy instruments not market models, there is little guarantee that the EU will not resume its liberalisation crusade in the future.

Finally, the EU's propensity to integrate energy in the context of its overall foreign policy must be mentioned. This approach originated in the EU in 2006 following the first Russian–Ukrainian crisis (EU, 2006) and was then gradually developed (see Romanova, 2009). This approach has only further intensified because of the 2014 events in Ukraine. The most recent communication regarding European energy security strategy (European Commission, 2014) emphasises the need to further diversify away from Russia. This strategy also appears in the work of bilateral institutions. Moreover, the EU interrupted contacts in the ED at all levels, including the transnational Gas Advisory Council. Although it is understandable from the perspective of the EU's normative power, this reaction is destructive to EU–Russian energy institutions.

Although they do not prevent the establishment of bilateral transgovernmental and transnational institutions, both formal and informal Russian and EU institutions severely challenge them. Existing bilateral institutions will survive. However, the efficiency of these bodies will depend on how Russian and EU institutions develop and the pressure they exert on bilateral institutions.

5. Conclusions and policy implications

The empirical findings of the article have demonstrated that the role of EU–Russian energy institutions is more nuanced than is usually believed and that institution-building has not been a futile exercise. Russia prefers institutions that allow for the equal treatment of both systems of regulation (state- and market-driven). Russia's rejection of the legally binding ECT is caused not by its legal nature but rather by the paradigm of regulation that it promotes. As a result, both the ECT and the ED become hybrid institutions that decrease transaction costs and create order. In this way, the ECT and the ED perfectly reflect the nature of the relations between the EU and Russia, which subscribe to different regulative paradigms.

Furthermore, the article has shown that the ED's strengthening of transgovernmental and transnational structures allowed some depoliticisation (especially regarding the EU's third liberalisation package and new export pipelines). This work, mostly completed by the Gas Advisory Council, also ensures the coexistence and approximation of EU and Russian approaches to market regulation at the level of implementation. The depoliticisation effect has, however, been limited because transit countries were not included.

⁶ An interview with a Russian participant of the Gas Advisory Council.

⁷ An interview with a Russian participant of the Gas Advisory Council.

Positive developments are constrained by informal institutions in both Russia and the EU. In Russia, these institutions are Russia's great power and special status aspirations and the limited de-facto delegation of responsibilities. The EU's institutional rivalries, propensity to impose its legislation on third partners and examination of energy relations through foreign policy lenses restrict positive developments.

Finally, the article has traced the evolution of EU–Russian energy institutions since 2000. Both the ECT and the ED have encouraged the development of transgovernmental and transnational institutions. However, progress has never been linear; rather, it has occurred in reaction to the pressure of external crisis. By demonstrating this process, the article contributes empirically to the discussion regarding how institutions can emerge under a rational institutionalist framework.

Five policy implications originate from this research. First, the non-imposition of a single paradigm is significant to the current success of EU–Russian energy institutions. Provided that this rule is respected, these institutions can have a binding and non-binding nature. However, work will be required regarding the EU's tendency to impose its legislation on third partners. Listening to the Russian partners and understanding their constraints becomes essential.

Second, to limit politicisation, the involvement of not only the EU and Russia but also Ukraine is needed. The viability of this option was demonstrated in the May–June 2014 negotiations regarding Ukraine's debt for Russian gas. This practice should continue and also involve transgovernmental structures.

Third, duplicating the experience of the Gas Advisory Council, transgovernmental and transnational cooperation between the EU and Russia should be further nurtured through increased exchange of information and enhanced networking by officials, business representatives, and experts. Networking might also involve officials and business representatives and civil society in related sectors (environment, industry, trade, etc.). Successful cooperation may cause Russia to adopt a more constructive position regarding external energy policy; it could abandon insistence on special status in favour of more mundane technical cooperation. Therefore, recent disruption of transgovernmental and transnational channels of cooperation by the EU is counter-productive. The EU must constructively limit its tendency to examine EU–Russian energy relations in the framework of its foreign policy and world politics.

Fourth, the connection between depoliticisation and regulative convergence should be strengthened. The deepest depoliticisation is the result of constructing transparent, predictable, and shared market rules. Thus, the two challenges of EU–Russian energy relations should be addressed simultaneously, which has already been exemplified by the work of the Gas Advisory Council.

Finally, this article advocates the tactics of incremental steps that allows for convergence regarding policy instruments while respecting the different regulative paradigms of the partners.

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