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The European Green Deal: A Gateway to Strategic Energy Autonomy?

*El Pacto Verde Europeo:
¿una vía hacia la autonomía energética estratégica?*

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Summary: I. Introduction.—II. Strategic autonomy and energy.—
III. Spheres of influence, sovereignty, war and energy supply.—
IV. Repowering the EU: achieving strategic energy autonomy by
accelerating the green transition?—V. Conclusion.

Abstract: The concept of “strategic autonomy” embeds the political idea of “independence” and the legal notion of “sovereignty”. As the EU largely depends for energy on foreign resources, particularly from autocratic regimes, difficult governance situations, notably wars, can deeply disrupt the Union’s energy supply. Specifically, war in Ukraine has been convincingly explained as an affirmation of the opposed development of Russia’s “sphere of influence”, whereby energy supply is used as a “weapon” to create dependency across sovereign State borders. Whereas scholars have advanced a dichotomy for the EU and its Member States to escape Russia’s sphere of influence, either diversifying energy sources or accelerating the green transition, it is argued in this paper that the two approaches should be considered complementary rather than alternative. It is therefore suggested that, at least in the short term, the EU and its Member States should seek to diversify their energy sources, whilst at the same time trying to accelerate the green transition under the Green Deal as a longer-term strategy. As

¹ With the support of the Erasmus+ Programme of the European Commission: 620604-EPP-1-2020-1-AU-EPPJMO-PROJECT. The author would like to thank Sara Poli, Professor of EU Law at the University of Pisa, Political Science, and anonymous peer reviewers for their precious suggestions. Contents reflect the view of the Author only.

the EU and its Member States should qualify as “non-belligerent” vis-à-vis Russia, necessity seems the most suitable legal justification to relinquish already contracted energy supply obligations and move to a newly balanced energy policy.

Keywords: Strategic energy autonomy, spheres of influence, sovereignty, war, energy supply crisis, green transition.

Resumen: *El concepto de «autonomía estratégica» incorpora la idea política de «independencia» y la noción jurídica de «soberanía». Ya que la UE depende para la energía en gran medida de recursos extranjeros, en particular de regímenes autocráticos, las situaciones de gobernanza difíciles, en particular las guerras, pueden perturbar profundamente el suministro energético de la Unión. Concretamente, la guerra en Ucrania se ha explicado de forma convincente como una afirmación del desarrollo opuesto de la «esfera de influencia» de Rusia, en la que el suministro de energía se utiliza como un «arma» para crear dependencia más allá de las fronteras de los Estados soberanos. Mientras que la doctrina académica ha propuesto una dicotomía para que la UE y sus Estados miembros escapen de la esfera de influencia de Rusia, ya sea diversificando las fuentes de energía o acelerando la transición verde, en este artículo se argumenta que los dos enfoques deben considerarse complementarios en lugar de alternativos. Por lo tanto, se sugiere que, al menos a corto plazo, la UE y sus Estados miembros busquen diversificar sus fuentes de energía, mientras que al mismo tiempo intenten acelerar la transición del Pacto Verde como una estrategia a más largo plazo. Considerando que la UE y sus Estados miembros deberían calificarse como «no beligerantes» con respecto a Rusia, el estado de necesidad parece la justificación jurídica más adecuada para renunciar a las obligaciones de suministro de energía ya contraídas y pasar a una política energética diversamente equilibrada.*

Palabras clave: *Autonomía energética estratégica, esferas de influencia, soberanía, guerra, crisis de suministro energético, transición verde.*

I. Introduction

That energy is an essential element of strategic autonomy is demonstrated by the reaction to the decision of then US President Trump when, in 2019, he approved sanctions recommended by the Senate on any firm supporting the Russian-owned company Gazprom to complete the Nord Stream 2 project. Germany and Austria considered this act an undue “interference” with the “internal sovereignty” of EU Member States². The EU reacted via a Council regulation including measures to limit the effects of the extraterritorial application of third-country legislation³. The US ambassador to Berlin argued that avoiding completion of Nord Stream 2 would have reinforced the Union’s autonomy, excluding that Germany become a “hostage of Russia”⁴.

That Nord Stream 2, a couple of offshore natural gas pipelines running under the Baltic Sea from northwest Russia to Germany, would not help to secure the diversification of energy supply for the EU, and thus, at least indirectly, its strategic autonomy, has later been proved by the outbreak of war in Ukraine. When, on 22 February 2022 Russia recognised the Donetsk and Luhansk People’s Republics as a prelude to the invasion of Ukraine Germany suspended certification of the second Nord Stream pipeline⁵. Further economic retaliatory measures were adopted by the EU against Russia and Belarus as a supporting State, spanning asset freezing and limitations on trade⁶, which prompted Russia to threaten and implement the suspension of gas supply to various EU Members States, including Bulgaria and Poland, unveiling a situation of extreme dependency⁷.

² Martin Russell, “At a Glance: Gazprom’s Controversial Nord Stream 2 Pipeline. European Parliamentary Research Service”, PE 608.629, 2017, 2.

³ Council of the EU, Regulation (EC) no. 2271/96, 22 November 1996, “Protecting against the Effects of the Extraterritorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom”, OJ L 309, 1.

⁴ Reuters, “Russia Can Complete Nord Stream 2 Pipeline by Itself: Kremlin”, *Deutsche Welle*, 26 December 2019, <https://www.dw.com/en/russia-can-complete-nord-stream-2-pipeline-by-itself-kremlin/a-51800591>.

⁵ Sarah Marsh and Madeline Chamber, “Germany Freezes Nord Stream 2 Gas Project as Ukraine Crisis Deepens”, Thomson Reuters, 23 February 2022, <https://www.reuters.com/business/energy/germanys-scholz-halts-nord-stream-2-certification-2022-02-22>.

⁶ European Council, “Sanctions against Russia Explained”, 2022, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained>.

⁷ Alexander Mihailov, “Why Bulgaria and Poland can Withstand Russia Cutting off Their Gas Supply”, *The Conversation*, 17 April 2022, <https://theconversation.com/why-bulgaria-and-poland-can-withstand-russia-cutting-off-their-gas-supply-182068>.

This article aims to address the question of the EU strategic autonomy in the energy sector via a law and policy analysis. From a policy perspective, the research builds on the theory of realism in international relations, whereby national interest defined as power is at the basis of security concerns and interaction among sovereign entities⁸. Within this framework, the idea that States may act and exert power to establish “spheres of influences”, aiming to create spatial regions with a degree of cultural, economic, political and military exclusivity, emerges as a possible core explanation of conflicts and the energy supply crisis in the EU⁹. From a legal perspective, the analysis is mostly grounded in positivism and aims to determine to what extent the political conduct of State and non-State actors—that is, sovereign and non-sovereign entities—is consistent with rights and duties internationally accepted as binding in a given context¹⁰.

Against the theoretical background of realism and positivism, the article unfolds via a three-step analysis. The first section assesses the meaning of the notion of “strategic autonomy” with respect to “energy supply” to determine what strategic autonomy means with respect to the energy sector. The second section considers the strategic autonomy of the EU in light of the energy supply crisis following war in Ukraine and the political theory of the “spheres of influence”. The third section considers whether accelerating the Green Deal is a possible way forward for the EU to achieve strategic energy autonomy.

II. Strategic autonomy and energy

The notion of “strategic autonomy” is a French concept that originated after World War II and was clearly expounded at the European level in a White Paper on defence¹¹. It was later developed as the idea of making “autonomous decisions” by Presidents Chirac and Blair to ensure the independence of the EU defence policy vis-à-vis the US and NATO, at a time when divergences

⁸ Arash Heydarian Pashakhanlou, *Realism and fear in international relations: Morgenthau, Waltz and Mearsheimer reconsidered* (Cham: Springer International Publishing, 2017); Ryan Mitchell, “Sovereignty and Normative Conflict: International Legal Realism as a Theory of Uncertainty”, *Harvard International Law Journal* 58(2) (2017): 421.

⁹ Susanna Hast, *Spheres of influence in international relations* (Farnham: Ashgate, 2014).

¹⁰ Benedict Kingsbury, “Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim’s Positive International Law”, *European Journal of International Law* 13(2) (2002): 401; Jörg Kammerhofer and Jean D’Aspremont, *International legal positivism in a post-modern world* (Cambridge: Cambridge University Press, 2014).

¹¹ France, 1994, “Livre Blanc sur la Défense”, 139, <http://www.livreblancdefenseetsecurite.gouv.fr>.

developed on fundamental issues such as Kosovo¹². On 5 March 2019, the concept found practical implementation via the creation of the Intelligence College in Europe. This is an intergovernmental initiative aiming to foster European security, by bringing together stakeholders on intelligence-related topics, contributing to the creation of a strategic intelligence culture in Europe¹³.

From a political vantage point, the concept of “strategic autonomy” refers to the “independence” of the EU in directing its governance. From a legal standpoint, the notion translates into the idea of the free exercise of sovereignty¹⁴. The concept is therefore a basic one and is clearly tied to the very foundations of the EU within the international legal order: it relates to the international dimension and relations of the Union. Within this theoretical framework, the concepts of “independence” and “sovereignty” are not necessarily absolute, but can be set at different levels of ambition. Thus, whilst it “nurtures the ambition of strategic autonomy”, the 2016 EU Global Strategy also acknowledges that the Union’s interests are “best served in an international system” that is grounded in multilateralism and “deepening the transatlantic bond” and “partnership with NATO”, while connecting “to new players” and exploring “new formats”¹⁵. With respect to its content, over the last 20 years the concept of “strategic autonomy” has undergone a process of development that has broadened its width from traditional core areas, particularly security, to other governance sectors that are key to the exercise of sovereignty. Indeed, in a letter to the European citizens ahead of the 2019 European parliamentary elections, French President Emmanuel Macron stated that European strategic interests encompass, inter alia, “environmental standards, data protection and fair payment of taxes”¹⁶.

Within this framework, energy has been identified as a key sector for the strategic autonomy of the EU. The 2016 Global Strategy included it in the priorities of the EU external action, in conjunction with the climate crisis¹⁷, and as an essential element to achieve security¹⁸. That energy is key

¹² Frédéric Mauro, Report 2018-1, Group for Research and Information on Peace and Security, “Strategic Autonomy under the Spotlight”, 7.

¹³ Intelligence College in Europe, “Building a Common Strategic Culture”, 2023, <https://www.intelligence-college-europe.org>.

¹⁴ Eloise Ryon, “European Strategic Autonomy: Energy at the Heart of European Security?”, *European View* 19(2) (2020) 238, 240.

¹⁵ EU, 2016, “Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union’s Foreign and Security Policy”, 4, https://www.eeas.europa.eu/eugs_review_web_0.

¹⁶ Élysée, “For European Renewal”, 4 March 2019, <https://www.elysee.fr/emmanuel-macron/2019/03/04/for-european-renewal.en>.

¹⁷ EU, “Shared Vision ...”, 9.

¹⁸ *Ibid.*, 19.

to the EU construction is made clear by the fact that, besides the 1957 European Economic Community (EEC)¹⁹, the fundamental pillars of the European Communities have been, since their very inception, the 1952 European Coal and Steel Community (ECSC) and the 1957 European Atomic Energy Community (Euratom)²⁰. A common market cannot indeed properly function without a viable energy policy. Whilst the ECSC expired in 2002, the Euratom is still functioning. The key institutions of the current EU themselves, including the Commission, Council and Parliament, are the outcome of the 1965 fusion of the main bodies of the EEC, ECSC and Euratom via the Merger Treaty²¹.

Schematically, energy is usually defined as “the ability to do work”²². Non-renewable energy, including sources such as petroleum, hydrocarbon gas liquids, natural gas, coal and nuclear energy, is limited in supply. Coal, natural gas and petroleum have formed via the buried remains of ancient sea plants and animals: they are therefore known as “fossil fuels” and are the main drivers of GHG emissions and climate change. By contrast, renewable energy, including solar, geothermal, wind, water and biomass energy, can be replenished²³.

Security of energy supply is concerned with the capacity of effectively managing primary energy supply from domestic and external sources, the reliability of energy infrastructure, and the ability to meet current and future energy demand²⁴. Together with carbon emissions and price affordability, it constitutes a key element of the “energy trilemma”²⁵. Unsurprisingly, it is also an essential element of the EU politics and Energy Strategy²⁶. Scholars consider that the high strategic and security value of the European energy sector is problematic in light of the dependency of the EU and its Member States on energy supply import²⁷.

¹⁹ Treaty Establishing the European Economic Community, opened for signature 25 March 1957, 298 UNTS 3, entered into force 1 January 1958.

²⁰ Treaty of Paris establishing the ECSC, 261 UNTS 140; Euratom Treaty, opened for signature 25 March 1957, 298 UNTS 259, entered into force 1 January 1958.

²¹ Opened for signature 8 April 1965, entered into force 1 July 1967.

²² US Energy Information Administration, “What is Energy?”, 28 June 2022, <https://www.eia.gov/energyexplained/what-is-energy/sources-of-energy.php>.

²³ *Ibid.*

²⁴ ARUP, “Energy Trilemma”, 4, <https://www.arup.com>.

²⁵ *Ibid.*, 2.

²⁶ European Commission, “Energy Strategy”, 2023, https://energy.ec.europa.eu/topics/energy-strategy_en; Id, “Energy Security”, 2023, https://energy.ec.europa.eu/topics/energy-security_en.

²⁷ Barbara Lippert, Nicolai von Ondarza and Volker Perthes, “European Strategic Autonomy. Actors, Issues, Conflicts of Interests”, Stiftung Wissenschaft und Politik, SWP Research Paper 425, 2019, <https://www.swp-berlin.org>.

With respect to the division of regulatory competences between the EU and its Member States, energy, and therefore security of supply, is a matter of governance for both the Union and the Member States under the primary sources of EU law. More specifically, under Article 4(2) of the Treaty on the Functioning of the European Union (TFEU)²⁸, “energy” is an area of shared competence between the Union and the Member States. Therefore, the Union can only intervene as a regulator when the objectives of proposed action cannot be sufficiently achieved by States, either at a central or local level, but can instead, because of the scale of proposed action, be better achieved by action at the Union level, according to the principle of subsidiarity, under Article 5(3) of the Treaty on European Union (TEU)²⁹.

III. Spheres of influence, sovereignty, war and energy supply

The EU depends on energy sources from around the world that are at risk of sudden disruption owing to situations of difficult governance and conflict: the outburst of war in Ukraine in 2022 represents the most prominent example. Reportedly, the EU depends on three authoritarian countries for almost half of crude oil import, including Russia (27 per cent), Saudi Arabia (8 per cent), and Kazakhstan (7 per cent)³⁰. Furthermore, Russia accounts for almost half of the Union’s import of solid fuel (mostly coal) and 40 per cent of natural gas. The EU dependency on energy import has increased by about 5 percentage points since 2000, ranging from more than 90 per cent in States such as Malta, Luxembourg, and Cyprus, to 5 per cent in Estonia³¹. This triggers a situation of “non-autonomy” that excessively diminishes the ability of the Union to take free political decisions and poses a security threat³².

If the EU is in a situation of extreme dependence from Russia as concerns energy supply, the theory of the “spheres of influence” has been convincingly invoked by scholars to provide an explanation on the other side of the fence³³. The theory is rooted in colonialism and has undergone

²⁸ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, opened for signature 13 December 2007, 2702 UNTS 3 No 47938, entered into force 1 December 2009.

²⁹ *Ibid.*

³⁰ Céline Charveriat and Tim Gore, “The Case for Green Strategic Autonomy”, 3 March 2022, <https://ecfr.eu/article/the-case-for-green-strategic-autonomy>.

³¹ *Ibid.*; Eurostat, “Energy Statistics”, <https://ec.europa.eu/eurostat/web/energy/data/database>.

³² Céline Charveriat and Tim Gore, “The Case ...”.

³³ Pierre-Yves Hénin, “The Russian Offensive in Ukraine, A War for a Sphere of Influence” *Revue internationale et stratégique* 126(2) (2022): 17.

significant development throughout the cold war, when the US and Russia were able to create spheres of influence. Whilst in a neutral form the concept may positively channel the idea of support, in a negative sense it expresses the idea of control and can go as far as to involve the creation of “satellite States”. It indeed pictures the concept of a State or organisation exercising cultural, economic, military or political exclusivity over another State, even outside a formal alliance via the exercise of soft power. Along these lines, the theory claims that extremely powerful States can rely on arms and other types of “weapons”, including energy as a key element, to expand and exercise influence beyond State geographical boundaries. The theory has been relied upon to explain the relationship between the Soviet Union and the Eastern European Bloc after World War II³⁴. In this context, whilst the EU would have sought to use the energy channel as a way to include Russia in its market structure, as shown by the Energy Charter Treaty³⁵ process³⁶, arguably war in Ukraine and its energy implications seem to indicate that Russia rather perceives global relations as multipolar and dominated by a small number of great powers, now aiming to reaffirm influence over its neighbourhood³⁷. Clearly, when influence develops into war the idea of a sphere of influence is diametrically opposed to that of strategic autonomy, as it supports by its very nature meddling with domestic affairs and limiting foreign policy options³⁸. Scholars consider that the EU has essentially underestimated such a possible development of Russia’s external policy³⁹.

With respect to the situation in Ukraine and EU dependency on the provision of gas by Russia, the theory of the “spheres of influence” as a means to create dependency seems to be validated by a few key historical precedents. Notably, in July 2006 Russia dried up the Druzhba oil pipeline, disrupting supply to Lithuania. The shutdown followed PKN Orlen overriding Russian companies, particularly oil giant Yukos, in the race to acquire the Lithuanian oil refinery Mazeikiu Nafta, thanks to an offer of \$2.3 billion. The disruption was explained by Russia’s crude oil pipeline

³⁴ Ulrich Speck, “The EU Must Prepare for a Cold Peace with Russia”, Carnegie Europe, 9 December 2014, <https://carnegieeurope.eu/2014/12/09/eu-must-prepare-for-cold-peace-with-russia-pub-57443>.

³⁵ Opened for signature 17 December 1994, 2080 UNTC 95, entered into force 16 April 1998.

³⁶ Energy Charter Secretariat, “The Energy Charter Process”, https://www.energycharter.org/fileadmin/DocumentsMedia/Infographics/2015_Energy_Charter_Process_General.pdf.

³⁷ Ulrich Speck, “The EU Must Prepare ...”.

³⁸ Susanna Hast, *Spheres of influence ...*, 1.

³⁹ Ulrich Speck, “The EU Must Prepare ...”; Roman Kuźniar, “Central and Eastern Europe and the Concept of the Sphere of Influence”, *Politique étrangère* 2 (2022): 53.

monopoly Transneft as the consequence of a leak and was followed by statements that supply might never reopen. Lithuania interpreted the halting of oil supply as a political move. Scholars commented that “to create Armageddon”, Russia would have no need to shower the West with nuclear missiles, as the simple announcement of halting the Transneft export pipeline for emergency repairs —hopefully temporarily— would send oil prices above \$200 per barrel and trigger financial chaos, forcing the West to negotiate and find accommodation⁴⁰.

When in July 2008 the US and Czech Republic signed an Agreement to Establish a United States Ballistic Missile Defense Radar Site in the Czech Republic, Russia alleged technical issues and diminished significantly oil supply to the country for several weeks. Whilst the defence site involved the use of former Soviet-era satellites and Russia threatened retaliation by pointing missiles at the Czech Republic and Poland, Deputy Foreign Minister Sergei Kislyak declared that trade would in no way be linked to the deployment of missile shield components. Russian pipeline monopoly Transneft stated that supplies via the Druzhba pipeline had dropped by half following the decision to refine more crude oil at home. At that time, the Czech Republic had sought to diversify oil supply through the IKL pipeline connected to the delivery system in Germany, but it still received 5.5 million tonnes of crude oil via the Druzhba pipeline from Russia, out of a need of 7.7 million⁴¹.

Following a dispute over gas transit fees, in 2009 Russia interrupted gas supply to the EU via a pipeline transiting Ukraine. The case escalated to the point where 20 per cent of overall gas supply to Europe was interrupted, with a protracted two-week stall in winter and serious implications for southeast European countries⁴². Under the cover of a commercial dispute, political arguments have been advanced to justify the crisis, including Russia’s resentment vis-à-vis the expansionism of the North Atlantic Treaty Organization (NATO) in Eastern Europe and the Ukrainian tendency to embrace western policy goals⁴³. Analysts consider that the decried tendency of the Russian government to use energy as a political “weapon” against the EU and, more broadly, European States, did not play any part in the crisis, as

⁴⁰ Vladimir Socor, “Russian Oil Pipeline Shutoff to Lithuania: Wider Ramifications”, *Eurasia Daily Monitor* 110(4) (2006), <https://jamestown.org/program/russian-oil-pipeline-shutoff-to-lithuania-wider-ramifications>.

⁴¹ Yelena Fabrichnaya, “Russia Says Czech Oil Supply Cut ‘Not Political’”, 15 July 2008, <https://www.reuters.com/article/czech-russia-oil-idUSL1451616820080714>.

⁴² Jonathan Stern, Simon Pirani and Katja Yafimava, “The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment”, 2009, <https://www.oxfordenergy.org/publications/the-russo-ukrainian-gas-dispute-of-january-2009-a-comprehensive-assessment>.

⁴³ *Ibid.*, 33.

the relationship between the EU and Russia in the energy sphere is one of mutual dependence. In other words, if the EU relies heavily on Russian energy supply, Russia, Gazprom and other State-monopolised energy companies depend heavily on revenues generated by delivery to the EU⁴⁴. However, whilst this is certainly true in the long term, in the short term a disruption of energy supply is definitely more disruptive for the EU and its Member States' policies as the consumers rather than for Russia and Gazprom as the suppliers. Indeed, the 2022 Communication of the European Commission and High Representative for Foreign Affairs and Security Policy on the EU External Energy Engagement states that the ongoing "Russian military aggression" on Ukraine "is producing alarming systemic, knock-on effects on the global economy", "severely disrupting" the energy markets, with crude oil prices increasing by around 60 per cent and gas pricing by 50 per cent⁴⁵. According to scholars, the energy price shock triggered by war raises three fundamental challenges, concerning (1) how to quickly reduce energy dependence on Russia, (2) how to build new partnerships with third countries based on green technology and (3) how to implement the Fit for 55 package so as to bring the European Green Deal to life⁴⁶.

Whether the concept of a "sphere of influence" is consistent with the foundational element of sovereignty in international law is a problematic question. Essentially, the European Council considers that the notion is *per se* inconsistent with the time-honoured principle of non-interference in domestic affairs recognised in Principle 3 of the UN Declaration on Friendly Relations and Co-operation among States⁴⁷. At the same time, it should be noted that the possibility for Russia of establishing a sphere of influence by creating dependence on energy has developed thanks to the agreement of the EC and EU, which have not pursued an effective policy to achieve diversification via internal production and external supply. Substantively, it seems overall reasonable to hold Russia internationally responsible for breaching the obligation not to interfere with domestic

⁴⁴ *Ibid.*, 60.

⁴⁵ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 18 May 2022, Joint Communication to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, JOIN(2022) 23 final, "EU External Energy Engagement in a Changing World", 9.

⁴⁶ Susi Dennison, "Diplomatic Power: The EU's Ambitious New Energy Strategy", 26 May 2022, <https://ecfr.eu/article/diplomatic-power-the-eus-ambitious-new-energy-strategy>.

⁴⁷ UN General Assembly, RES/2625(XXV), 24 October 1970. See European Council, "European Security Situation: Notions of 'Spheres of Influence' Have No Place in the 21st Century", Press Release, 24 January 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/01/24/european-security-situation-notions-of-spheres-of-influence-have-no-place-in-the-21st-century>.

affairs when it suddenly disrupts energy supply, as in the highlighted cases. Responsibility should also exist if disruption is adopted to retaliate against EU countermeasures following the invasion of Ukraine, in light of ILC's Draft Article 49 (Object and Limits of Countermeasures), because of the initial breach of an obligation not to resort to force in international relations.⁴⁸ Procedurally, nonetheless, assessing liability is a complex process, progressively involving invocation of responsibility, enquiry, negotiation, arbitration and adjudication. This is not easy to implement, particularly in time of war and makes responsibility for creating a sphere of influence more a theoretical concept than a practical one.

IV. Repowering the EU: achieving strategic energy autonomy by accelerating the green transition?

A reaction to situations of shortages of supply has been envisaged for the EU in the alternative terms of either a diversification of its energy sources or the building of autonomous energy sources. In this framework, it has been noted that in the energy sector the EU should pursue a diversification of sources to achieve energy supply, rather than aiming for independent production. Indeed, Klaus-Dieter Borchardt, former Deputy Director General at the EU Directorate-General for Energy and current Senior Energy Advisor at the European & Competition Law Practice in the Baker McKenzie Brussels office, considered that, in light of the EU substantive dependence on energy import, autonomy should not be for the Union "a goal in itself"⁴⁹. Similarly, Jaroslaw Pietras, former Director General of the Directorate-General for Transport, Energy, Environment and Education of the Council Secretariat, thinks that in the energy sector "it is not so much about autonomy", but it is "rather about diversification"⁵⁰.

Whilst diversification has thus in principle been opposed to autonomy in a sort of dichotomy, there are, as we have seen⁵¹, different degrees of strategic autonomy, which are constrained by bilateralism and multilateralism in international relations. It can therefore be considered that the two approaches are complementary, rather than opposite, and that diversifying the sources of energy supply is also a way for the EU to achieve strategic autonomy, at least in a "spurious" form. The key is

⁴⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Judgment)* [1986] ICJ Rep 14, 99, para. 188.

⁴⁹ Eloïse Ryon, "European Strategic Autonomy", 242.

⁵⁰ *Ibid.*

⁵¹ Section 1.

striking the right balance. Along these lines, the 2016 EU Global Strategy proposes that the EU seeks “to diversify its energy sources, routes and suppliers, particularly in the gas domain” and “to promote the highest nuclear safety standards in third countries”, strengthening “relations worldwide with reliable energy-producing and transit countries” via energy diplomacy⁵².

Within this theoretical scenario, the dramatic 2022 Ukrainian crisis is contributing to shifting the balance from a dualistic approach to the idea of accelerating the green transition under the Green Deal in conjunction with supply diversification. It has indeed been suggested that the EU and its Member States develop a common “energy security policy” grounded in the idea of “green strategic autonomy”⁵³. From this vantage point, in the short term diversification of foreign energy sources should be pursued intensively, as EU Member States are doing to a different extent⁵⁴. In the longer term, all energy sources in the EU should become compatible with its strategic autonomy, and should thus be based on sustainability and include a mandatory target to reduce dependency on foreign energy supply⁵⁵. Within this framework, the EU should specifically reconsider gas simply as a transition fuel in its decarbonisation pathway and speed up the electrification of European energy networks envisaged in the Fit for 55 package⁵⁶, thus, for instance, replacing all EU gas boilers and stoves with renewably sourced ones within a couple of years⁵⁷.

The EU seems to have embraced the idea of accelerating the transition under the Green Deal via the REPowerEU Plan, which aims to bring energy generation within the EU borders through renewables⁵⁸. Essentially, the plan aims at doubling the Fit for 55 target for bio-methane and tripling that for hydrogen⁵⁹, aiming to replace between 25-50 bcm per year of imported

⁵² EU, “Shared Vision ...”, 22.

⁵³ Céline Charveriat and Tim Gore, “The Case ...”.

⁵⁴ Laura Heidecke *et al.*, “The Revision of the Third Energy Package for Gas”, PE 734.009, 18 July 2022, <https://www.europarl.europa.eu>.

⁵⁵ Céline Charveriat and Tim Gore, “The Case ...”, 2022.

⁵⁶ European Council, “Fit for 55”, 2021, <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-planfor-a-green-transition>.

⁵⁷ *Ibid.* This approach is in line with the worldwide tendency to improve renewable electricity generation (International Energy Agency, “Energy Security: Reliable, Affordable Access to All Fuels and Energy Sources”, 2022, <https://www.iea.org/topics/energy-security>).

⁵⁸ Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 108 final, 8 March 2022, “REPowerEU: Joint European Action for More Affordable, Secure and Sustainable Energy”.

⁵⁹ European Council, “Fit for 55”.

Russian gas by 2030⁶⁰. At the same time, the EU aims at improving the share of renewables in the grid, notably via extensive electrification, improving the Fit for 55 target of tripling the EU photovoltaic capacity by 2030⁶¹. Within REPowerEU, the EU adopted the International Energy Strategy, particularly as outlined in the 2022 Communication on the EU External Energy Engagement in a Changing World⁶², which envisages a diversification of energy supply, accelerating the green energy transition at the global level and reducing dependence on gas and other energy import from Russia. In particular, the EU aims to increase the delivery of liquefied natural gas from the US, Canada, Norway, Azerbaijan, Qatar and Australia, conclude political agreements with gas suppliers such as Egypt and Israel, restart the energy dialogue with Algeria and explore the export potential of sub-Saharan African countries, such as Nigeria, Senegal and Angola⁶³.

From a legal standpoint, the possibility of diversifying energy sources for the EU depends on the capacity of the Union, its Member States and companies to relinquish engagements they have entered into with Russian energy suppliers, such as Gazprom, in order to be able to move to a new (green) policy. Whilst war can be invoked as a reason to at least suspend trade relations with the enemy⁶⁴, the EU and its Member States do not seem to be, at least for the time being, at war with Russia and the supporting Byelorussian State⁶⁵. The most appropriate status for the EU and its Member States seems therefore to be that of “non-belligerent” parties, that is, sovereign entities that are not neutral, as they support the war effort of Ukraine, but that do not engage in hostilities either⁶⁶. This seems to exclude, or, at least, strongly limit, the possibility for the EU, its Member States and companies to simply relinquish their engagement in the energy sector by invoking war. More plausibly, the EU and its Member States could invoke the energy supply crisis triggered by war in Ukraine as a justification, or as an

⁶⁰ “Russian Invasion of Ukraine Encourages Energy Transition, Self-Sufficiency”, *Oil and Energy Trends* 47(4) (2022): 11.

⁶¹ *Ibid.*, 4.

⁶² European Commission and High Representative of the Union for Foreign Affairs and Security Policy, “EU External Energy Engagement ...”, 1.

⁶³ European Commission, “REPower the EU by Engaging with Energy Partners in a Changing World”, Fact Sheet on the International Energy Strategy, 2022, <https://ec.europa.eu>.

⁶⁴ *Payment of Various Serbian Loans Issued in France (France v. Serbia) (Judgment)* [1929] PCIJ Series A No 20, 3, 39-40; *Brazilian Loans (France v. Brazil) (Judgment)* [1929] PCIJ Series A No 21 94, 120.

⁶⁵ European Council, “EU Response to Russia's Invasion of Ukraine”, 17 January 2023, <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion>.

⁶⁶ On the concept of ‘non-belligerency’, see Natalino Ronzitti, “Italy’s Non-Belligerency During the Iraqi War”, in *International Responsibility Today*, ed. Maurizio Ragazzi (Leiden: Brill 2005), 197.

excuse, under Article 25 (Necessity) of the International Law Commission's 2001 Draft Articles on State Responsibility for Internationally Wrongful Acts and the 2011 Draft Articles on the Responsibility of International Organizations for an Internationally Wrongful Act⁶⁷. Indeed, according to the Greek Minister for Energy, Kostas Skrekas, war in Ukraine has triggered an energy crisis that will have a “destructive impact” on European industries and citizens⁶⁸. From this perspective, relinquishing existing energy contracts in light of the impossibility of performing ensuing obligations would be the only way to safeguard the essential security of supply interest from a grave and imminent peril. This would radically exclude the responsibility of the EU and its Member States —and indirectly their companies— for the breach of contracted cross-border energy obligations or, at least, of ensuing sanctions, and can provide a plausible legal basis to move to the diversification of energy sources in the short term and independent green production in the longer term.

However, while in practice the perspective under the joint action of the Fit for 55 package and REPowerEU plan should prompt EU Member States to foster investment in carbon-neutral technologies, particularly via fast permitting licensing procedures, reliable economic models challenge the feasibility of a fast green transition, which is prospectively in excess of what has been achieved thus far⁶⁹. Several NGOs have also questioned the capacity of the EU for striking the right balance between diversifying energy supply and accelerating the green transition, via a complaint filed with the European Ombudsman on 25 May 2022⁷⁰. The complaint notes that, in line with REPowerEU, on 25 March 2022, the European Commission entered into an agreement with the US on European energy security, including the provision of additional LNG volumes until at least 2030 for approximately 50 billion cubic meters per annum, and the building of new infrastructure for import and export⁷¹. According to the complaint,

⁶⁷ ILC, “Report to UN General Assembly on the Work of Its Fifty-Third Session”, UN Doc. A/56/10, 2001, 26; ILC, “Report to the UN General Assembly on the Work of Its Sixty-Third Session”, UN Doc. A/66/10, 2011, 40.

⁶⁸ Georgia Evangelia Karagianni, “A Greek Initiative for an EU Energy Crisis Solidarity Facility”, 28 February 2022, <https://eu-sysflex.com/a-greek-initiative-for-an-eu-energy-crisis-solidarity-facility>.

⁶⁹ Ilaria Conti and James Kneebone, “A First Look at REPowerEU: The European Commission's Plan for Energy Independence from Russia”, 19 May 2022, <https://fsr.eui.eu/first-look-at-repower-eu-eu-commission-plan-for-energy-independence-from-russia>.

⁷⁰ Global Legal Action Network *et al.*, “Complaint to the European Ombudsman on Oil and Gas Imports from Russia”, 25 May 2022, <http://climatecasechart.com/non-us-case/complaint-to-the-european-ombudsman-on-oil-and-gas-imports-from-russia>.

⁷¹ *Ibid.*, para. 8.

such a policy would be fundamentally based on a wrongful assessment of the implications for climate change of proposed measures to reduce dependence on energy import from Russia and would lock the Union into long-term fossil fuel dependence⁷².

V. Conclusion

The concept of “strategic autonomy” entails the political idea of “independence” and the legal notion of “sovereignty”, essentially along the lines of the capacity of defending non-interference with political decisions. While it was originally developed in the 1990s with regard to the area of EU security, the idea of strategic autonomy has subsequently extended to other areas, including energy as a key element of politics and security itself. As the EU largely depends for energy supply on foreign resources, particularly from autocratic regimes, difficult governance situations, notably wars, have the potential to deeply disrupt the Union’s economy. If in the long-term disruption also affects the revenues of the supplier, in the short and medium term it certainly impacts more incisively the consumer. In particular, war in Ukraine can be convincingly explained as an affirmation of the opposed development of Russia’s “sphere of influence”, whereby energy supply is used as a “weapon” to create power dependency beyond sovereign State borders.

Although scholars have advanced a dichotomy for the EU and its Member States to escape Russia’s sphere of influence, either diversifying energy sources or accelerating the green transition, it is argued here that these approaches are complementary rather than alternative. Indeed, whereas strategic autonomy is absolute in its pure form, it can also tolerate different degrees of limitation in the context of bilateralism and multilateralism. Along these lines, at least in the short and medium term, the EU and its Member States could seek to diversify their energy sources, whilst trying to accelerate the transition under the Green Deal by coupling the Fit for 55 package and REPowerEU plan in the longer term, striking the right balance between diversification and transition to green energy production. To implement such a policy, security of supply could be invoked as a basis to establish necessity under Article 25 of the ILC’s 2001 DASR and dismiss energy contracts entered into with Russian companies, particularly considering that the EU and its Member States are non-belligerent vis-à-vis Russia and Ukraine.

⁷² *Ibid.*, paras 8-9.

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