

The clash between Russia and Ukraine on the price of gas and the consequent risks to supplies to Italy and other EU countries are symptomatic of a now inadequate European energy policy. The German presidency and the Declaration on the 50 years of the signature of the Rome Treaty provide an unmissable opportunity to take courageous decisions by identifying new areas for action by the EU

Energy policy: the European paradox

ENERGY 3

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Corbis

The renewed interest in more systematic European cooperation in the energy sector has been stoked within the Union by the Enel-Suez case and outside it by the repercussions of the steep hike in oil prices, and the Russia-Ukraine quarrel on the supply of natural gas. However, a quick look at the history of European energy cooperation raises many questions regarding the transformation of this interest into concrete policies, in part because of the ambiguous positions of European political leaders. The Community's approach to energy issues has gone through a paradoxical evolution in the

course of over 50 years of European integration. In fact, although the energy issue is clearly present in the roots of the process of integration (through the creation of the European Coal and Steel Community, the ECSC, to start with and then with the signing of the Euratom Treaty), with the passing of the years the energy scenario has been dominated by the numerous policies adopted at the national level by member States, which have left little room for initiatives by Brussels. The reasons for this evolution can be found in three principal factors. First of all, the strategic importance of the energy sector at



the national level has slowed the drawing up of an efficient common policy in the matter, as in the case of other sectors such as defence. Secondly, substantial heterogeneity among the various States as regards energy has blocked the identification of homogeneous needs. On the one hand, there are countries that are net energy exporters (such as the U.K. and the Netherlands, which have some of the biggest energy multinationals including Shell and British Petroleum). On the other, there are countries that – faced with scarce natural resources in their own subsoil – have chosen to undertake the path of creating national champions (such as Elf, Eni, Fina and Repsol), with the aim of ensuring the security of their own energy supplies: a strategy that was in fact fundamental to ensure high levels of growth in the post-war construction period and beyond. Finally, observing the evolution of the energy mix in European energy provisioning, it should be noted that the sources around which the ECSC and Euratom were set up were soon relegated to a marginal role, for economic and technical reasons in the case of coal and political reasons in the case of nuclear energy.

_Above: Shell's solar electricity plant in Gelsenkirchen, Germany, the most advanced in the world. When running it is able to produce sufficient energy for 7,000 households

The energy issue in the treaties: from the ECSC to the European Constitution

Unlike the treaties for the creation of the ECSC (1951) and Euratom (1957), the 1957 EEC treaty does not include provisions that explicitly give the Community responsibilities in the energy context, thereby demonstrating the member States' unwillingness to lay the foundations of a common energy policy. Similarly, the successive attempts to include a chapter on energy cooperation in the Maastricht (1992) and Amsterdam (1997) treaties failed during the negotiation phase. It is therefore not surprising that the Community has never been in a position to come up with a coherent energy policy that would delegate significant powers to Brussels. At the same time, however, it should be noted that the Community has managed to intervene in the sector (albeit



in a very limited way) even without explicit recognition in this regard within the treaties.

The difficult path of Community action

The first significant Community initiative in energy matters, taken outside the context of the ECSC or Euratom, dates back to 1968 on the issue of the security of the energy supply. Council Directive 68/414/EEC made it obligatory for member States to maintain stocks of oil, crude and petroleum products equalling at least 65 days (increased to 90 days from 1972 onwards) of average consumption figures for the previous year. However, the Commission's 2002 proposals to increase minimum stock quantities (from 90 to 120 days' worth), introduce the obligation to maintain at least a third of stocks under the control of a public body and give the Commission powers to launch emergency measures were unsuccessful.

The 2003 directives: competition in the internal market

The Union's most significant initiative in energy matters concerns the internal

market, particularly the electricity and natural gas sectors. At the beginning of the 1990s, integration among domestic energy markets had been reduced to the minimum, to the extent that it was no longer possible to delay the adoption of concrete measures. Two fundamental directives were in fact adopted concerning the electricity (1996) and gas (1998) sectors, with the objective of gradually opening them up to competition at the European level. Following the 2001 modifications, the Commission approved the new 2003 directives, which replaced the earlier ones. According to the provisions contained therein, all consumers in the concerned markets must be placed in a position to freely choose their electricity and gas providers in the context of a competitive market by July 2007. The four most important elements of the directives are:

- 1. *Unbundling*:** Energy distribution networks are to be run separately from the production and supply side; legally separate entities must handle distribution and transmission/transport, so as to guarantee free access to infrastructure by the interested parties;
- 2. *Tariffs*:** Transmission tariffs must be applicable to all system users on a non-discriminatory basis, and free third-party access to gas storage facilities must be guaranteed;
- 3. *Services of public interest*:** The directives set common minimum standards regarding public service requirements, which take into account the objectives of environmental protection, security of supply and competition;
- 4. *Monitoring*:** Each member State is required to appoint an independent national regulator to monitor the market.

The obligations undertaken with the Kyoto Protocol

The Union has undertaken numerous initiatives as regards environmental policy, particularly as regards the implementation of the obligations undertaken by signing the Kyoto Protocol. Significant measures in this regard include those concerning energy efficiency, the development of renewable energy sources and the establishment of the so-called "discipline for the trade of greenhouse gas emissions quotas". In



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particular, the Directive that set up the Save programme (1993) aimed at reducing CO₂ emissions and improving energy efficiency deserves a mention. As regards the development of renewable energy sources (wind, solar, hydraulic and biomass energy), the EU is mainly active through support for a common research policy, which has however struggled to produce significant results.

CO₂ emissions quota trade

On the other hand, the EU has a much bigger role in managing CO₂ emissions quota trade (effective since 2005). The link between European fiscal policy and energy issues (especially as regards VAT and excise duties, which have always been applied differently by member States) is particularly important, especially for the future. The system was subsequently regulated by Directive 2003/96/EC, which fixed minimum rates of taxation on fuel for commercial and industrial use and combustibles for heating and electricity. The initiatives undertaken in the context of energy infrastructure, an issue that took on great importance after the Moscow-Kiev squabble last winter over natural gas, also deserves a brief mention. In the context of the mandate for the creation of the single market and the policy of economic and social cohesion, the TEU gives the Union the objective of developing “trans-European networks” in the transport,

telecommunications and energy sectors. This forms the legal basis for the initiatives the EU has undertaken, aimed at drawing up guidelines to identify projects of public interest in this context. A large number of projects of this type have already been financed through a dedicated Community budget provision.

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Non-European markets: agreements with the former USSR republics and OPEC

The Community measures and initiatives described above essentially concern the European common market. However, Community action, albeit with the limits mentioned earlier, has also been related to the Union’s external relations, particularly with some energy producing countries on which the Union is increasingly dependent for its energy requirements. The most important initiatives in this regard include the Energy Charter Treaty (ECT), the EU-Russia dialogue and the dialogue with OPEC and GCC (Gulf Cooperation Council) producers. The first initiatives concern the relationship between the EU and the former Soviet republics. The Energy Charter Process was launched as a result of growing European



_Above: Bartenstein, president of the EU Energy Council, Piebalgs, the European commissioner for energy and Daukoru, the Nigerian Minister for Petroleum Resources and president of the OPEC conference in Brussels in June

dependence on supplies of natural gas from the East. The most significant result of this initiative has been the signature of the Energy Charter Treaty (ECT) in 1994, which outlines the widest existing framework of norms in matters of international cooperation on energy.

The ECT, though promising, runs the risk of largely remaining a dead letter: on the one hand because of the absence of the U.S. among the signatories and on the other because the Duma continues to block the ratification of the treaty, thereby preventing it from being implemented in the Russian Federation.

Meanwhile, the EU-Russia dialogue (started in October 2000) has so far struggled to achieve the hoped-for results in the energy sector, mainly as a result of Gazprom's dominance of natural gas; the State-controlled monopoly is in a position to apply an aggressive dumping policy vis-à-vis importers. As regards relations with OPEC, the EU made its move very late, only starting a bilateral dialogue in April 2005. The process does not promise significant results in the short and medium term, not least because of the heterogeneity of the OPEC group.

Towards the definition of a common energy strategy

It is difficult to forecast today what the features of a possible common energy policy will be. However, three documents prepared by the Commission over the past six years, which focus on possible future initiatives in the energy sector, offer significant indications. The first is the *Green Book – Towards a European Strategy for the Security of Energy Supply (2000)*, considered the first “manifesto” on the need to identify a common response to the challenges of energy dependence at the Community level. The second document is the *Green Book on Energy Efficiency – Doing More with Less (2005)*, which focuses on one aspect of control of the demand for energy, already identified in the first Green Book. In the third document, *Green Book – A strategy for Sustainable, Competitive and Secure Energy*, published this year, the “fundamental triangle” previously mentioned in the second Green Book (i.e. competitiveness according to the lines drawn up by the Lisbon agenda, environmental protection and security of supply) is the pivot for the definition of a possible common energy policy.

Communicating the benefits obtained through Community action to citizens. To sum up, it can be affirmed that the Commission has already sketched the guidelines that design at least the outlines of a common energy policy. It is now up to

the member States, which are being called upon to redesign the Union's future. In identifying these challenges, it will be necessary to clearly communicate to citizens the benefits that they could draw through Community action (e.g. on the tariff front, by indicating the "discount", even roughly, obtained thanks to EU action on consumers' energy bills). All these steps will probably be among the most important tasks of the forthcoming German presidency of the EU, on which hopes are converging from many sides for a fresh launch of the Community project. It is hence to be hoped that the declaration on the 50 years of the signature of the Rome Treaty will also focus on the Union's major problems and be able to indicate the parts of the European Constitution best suited to tackle these. In this way, the possible cherry-picking of the European Constitution – considered by many to be the most probable solution to the Constitutional issue – will be detached from the positions adopted by individual countries and instead be anchored on concrete solutions to problems that citizens face. The identification of new tasks managed by the Union, as in the case of an energy policy, exemplifies the delicate nature of this exercise. In fact, Article 17 of the Constitution could be more restrictive than Article 308 of the ECT, from which the so-far limited actions in the energy sector have been drawn.

The "flexibility clause"

The so-called "flexibility clause" envisaged by Article 17 limits the actions required to assign new powers and responsibilities to the Union to the policies defined in Part III of the Constitution itself. Hence it does not make a simple and wide-ranging reference to the need for a single market, as Article 308 of the ECT does, and thereby runs the risk of being counterproductive if the articles in Part III that envisage explicit powers for the Union on energy issues are not also maintained. It is therefore necessary to start a new phase for the Union, capable where required of going beyond the mere dictates of the European Constitution and identifying some "public goods" for which the optimal level of governance increasingly appears to



_Above: Alexei Ivchenko, Ukraine's Energy Minister and president of the management board of Naftogaz of Ukraine and Alexei Miller, president of the management committee of Gazprom

be at the Community level. All this is even truer in view of a common energy policy able to appropriate a solidarity-based clause (i.e. mutual help among member States in case of a temporary scarcity of energy resources), which could however give rise to free-riding if the Union is not given the opportune powers of regulation and control. It is in fact only too obvious that such a clause might tempt some countries to maintain insufficient energy stocks, knowing that they can count on other countries in case of a temporary crisis. To conclude, it can only be hoped that the energy policy will be part of the Union's future priorities, thereby making it possible to resolve the paradox of a European integration created precisely to manage energy issues.