

Contents

<i>List of Tables and Figures</i>	vii
<i>Foreword by Matthew Watson</i>	viii
<i>Foreword by Nodari Simonia</i>	x
<i>Acknowledgements</i>	xii
<i>Notes on Contributors</i>	xiii

Introduction: Bringing Energy into International Political Economy	1
<i>Michael F. Keating, Caroline Kuzemko, Andrei V. Belyi, and Andreas Goldthau</i>	

Part I Transnational Dynamics

1 Legal Approximation in Energy: A New Approach for the European Union and Russia	23
<i>Tatiana Romanova</i>	
2 Tensions between the Liberalist and Statist Approaches to Energy Trade Governance: The Case of Gas Dual Pricing	45
<i>Daniel Behn and Vitaliy Pogoretsky</i>	
3 The European Foreign Energy Efficiency Policy: Securing External Energy Supply in a Carbon-Constrained World	66
<i>Anatole Boute</i>	
4 Re-Thinking EU Energy Security: The Utility of Global Best Practices for Successful Transnational Energy Governance	86
<i>Michael F. Keating</i>	

Part II Beyond Domestic Contexts

5 Energy Efficiency Regimes: Possibilities and Limits of Best-Practice Transfer between Europe and Russia	109
<i>Andrei V. Belyi and Ksenia Petrichenko</i>	

6	Security and the Economics of Energy in North East Europe <i>Slawomir Raszewski</i>	130
7	Russian External Energy Strategy: Opportunities and Constraints <i>Ekaterina Demakova and Jakub M. Godzimirski</i>	149
8	Russo-Ukrainian Gas Wars and the Call on Transit Governance <i>Simon Pirani</i>	169
Part III Contemporary Transformations		
9	Energy Policy in Transition: Sustainability with Security <i>Caroline Kuzemko</i>	189
10	Emerging Governance Challenges for Eurasian Gas Markets after the Shale Gas Revolution <i>Andreas Goldthau</i>	210
11	Winds of Change: Long-Term Gas Contracts and Changing Energy Paradigms in the European Union <i>Kim Talus</i>	227
12	Governments, Policies and Companies: A Business Perspective <i>David Elmes</i>	243
	Conclusion: Energy Governance, Global Development and New Research Agendas <i>Timothy M. Shaw</i>	265
	Afterword: Findings and Further Avenues of Inquiry <i>Andreas Goldthau, Michael F. Keating, Caroline Kuzemko and Andrei V. Belyi</i>	282
	<i>Index</i>	288

1

Legal Approximation in Energy: A New Approach for the European Union and Russia

Tatiana Romanova

1. Introduction

Legal approximation, harmonization and unification became central for international cooperation in the twentieth century. According to some estimates, the second half of the twentieth century witnessed a 70 per cent increase in multilateral treaties setting common trade, investment and arbitration conditions, compared to what was the case in between 1850 and 1950 (Ku 2001: 4). It also gave boost to the development of model legislation in the framework of the International Institute for the Unification of Private Law (UNIDROIT), the United Nations Commission on International Trade Law (UNCITRAL) and other bodies; those model acts served examples in the process of legislative alignment. This phenomenon resulted from intensified transnational relations, from ever-increasing contacts among companies, civil societies and individuals, which led to the widening and deepening of the dialogue among various public bodies. In other words, private activities started to undermine the centrality of the state and the power of national boundaries. State authorities, therefore, increased their cooperation to provide a new set of regulations for both business and the non-profit sectors, and thus preserved their status in the regulation of various activities.

This process logically provoked numerous debates on the retreat of the state (Cutler 2003; Strange 1996), on network governance (Rhodes 1997; Stone 2004), on 'transgovernmental relations' (Keohane and Nye 1977; Slaughter 2004) and on legalization (Brütsch and Lehmkuhl 2007; Finnemore and Toope 2001; Goldstein et al. 2000; Wilets 2009).

Legal approximation, harmonization and unification are driven by both politics and economics. In this process, the domestic context has been strongly influenced by the international one. At the same time domestic rules and patterns have been extrapolated on the international level and have shaped the emerging transnational norms. In that, this is a mutually reinforcing process. As a consequence, national and international rules and legal contexts became blurred (Leebron 1996; Wiener 1999). This fluidity is part and parcel of the wider context, which is the subject matter of international political economy (Cox 1997; Gill and Law 1998; Gilpin 2001; Strange 1994). Legal approximation was also linked to the process of globalization. While some made it a reason of globalization (Scholte 2005), others looked at the intricacies of legal approximation as a consequence of globalization (Backer 2007; Basedow and Kono 2000; Lynch 2003; Meessen 2004; Mistelis 2001a, b; Wiener 1999).

The transnational character of legal approximation, its national-international and public-private dynamics and the influence of both politics and economics on it justify its analysis in the present volume, devoted to the political economy of energy.

Theoretical approaches to legal approximation between a state and an entity like the European Union (EU) have remained underdeveloped. The above-mentioned literature witnesses that legal approximation, or harmonization, has been explored as a factor, which changes the interaction among states, and between the business and the state. Economists also discussed advantages and deficiencies of legal harmonization vs. regulatory competition (Carbonara and Parisi 2005; Sun and Pelkmans 1995). Theoretical approaches to legal harmonization, suggested in the EU's context, emphasize a gradual convergence among member-states or candidate countries. This process is also extrapolated by EU experts on third partners of the EU, although in a rather unilateral manner (that is, third partners changing their legislation to bring it in line with that of the EU). An alternative, offered by the theory of international law, is the gradual development of a shared set of rules that results from international cooperation. None of these approaches, however, accurately describes the relations between the EU and a third country, which does not aspire to become its member and yet is in close economic cooperation with the EU and has the ambition to construct a strategic partnership. Therefore, the author of this chapter believes that an alternative approach is needed.

This chapter first looks at the two existing approaches to legal approximation between the EU and a third country (Russia). Next,

an alternative approach is suggested. This new approach is tested on EU-Russian energy relations, the most intensive and productive sphere of EU-Russian interaction to date. In particular, the successful case of the clean energy agenda is contrasted with a failure of the market-making agenda. This difference is explained through the lenses of the suggested alternative approach to legal approximation. Finally the chapter discusses the lessons drawn from the application of the new approach. It identifies avenues for future research and puts forth some policy recommendations.

2. Towards a new approach on legal approximation between the EU and third partners

Legal harmonization and legal approximation are terms developed in the course of the evolution of the EC (EU) law. Originally ‘the concept of “harmonization” only featured in one single provision (Art. 99EEC, in relation to indirect taxes). With regard to all other matters the term “approximation” was used and was only replaced by the formal term “harmonization” in paragraphs 4 and 5 of Article 100a of the Single European Act in 1987 (now Art. 95 (4) and (5))’ (Curtin et al. 2006: 12; see also Van Gerven 2004). So, approximation is associated with the old notion of common market and complete authenticity, while harmonization is linked to the internal market, mutual recognition and minimal legal convergence.

At present the terms are mostly used as synonyms; therefore they are used as equivalents in this chapter. The history of definitions, however, vividly demonstrates that the theory of legal approximation was initially developed for the EU’s internal purposes. The idea was to level the legal playing field with the aim of constructing a common (later internal) market. Hence, legal approximation was a part of the EC’s (EU’s) internal process of establishing a specific *sui generis* system of law with member states actively participating in setting goals, in drafting specific provisions and in their implementation. Moreover, the evolution of terminology also reminds us of the change, which made the EU’s legal approximation a success. Originally, it presupposed total harmonization of all rules and standards. This, however, turned out to be too resource- and time-consuming. Therefore, the Commission modified its approach. A choice was made to approximate only essential norms and standards while guaranteeing mutual recognition of national standards and regulations in other fields. Besides, there was a shift towards directive-based integration, which meant fixing binding goals

while providing for flexibility regarding the instruments to achieve these goals. This modified approach allowed member states to cut costs of legal convergence, to increase the speed of convergence and, most importantly, to better account for national specificities (both regarding the nature of regulation and the specific problems to be solved on the way to common goals). It is, therefore, noteworthy that the current definitions of legal harmonization/approximation stress compatibility rather than full authenticity of norms. For example, De Foulloy defines harmonization as ‘adjustment of the legislation or administrative provisions of the member state in a given sector so that they are in accord with each other’ (1992: H-227), while Egan specifies that ‘harmonization of policies was a means of reconciling differences in national regulatory practices and creating common rules’ (2006: 32). ‘The new approach meant that a number of different harmonization *methods* came to be used: *total* harmonization...*optional* harmonization...*partial* harmonization...*minimum* harmonization...*alternative* harmonization...mutual recognition’ (Van Gerven 2004: 508) instead of complete alignment of all norms.

It was the emergence of the internal market in the 1980s that eventually led to the development of the external component of legal approximation. The EC, later the EU, has since that time included legal harmonization in agreements with third countries, but the process has been a one-way street, from the EU, the sole author of the norms, to its partners, with virtually no flexibility for the latter. The scope of this approximation, its substance and procedures differ depending on the type of cooperation between the EU and a third country (Bordachev and Romanova 2003; Petrov 2008; Petrov and Hillion 2006; Prange-Gstohl 2009). But in any case there is a discussion neither about the substance of the norms nor about the means to introduce them in practice. While the EU’s approach has evolved and shifted from ‘complete harmonization’ to ‘minimum approximation’ internally, it did not do so externally. On the contrary, the old, maximum approach to legal approximation in its relations with outsiders has grown in its rigidity. Moreover, little difference is made between countries that would like to be part of the EU and those that would prefer to stay outside while cooperating with Brussels in selected policy areas.

The focus of Russian specialists has been on the adoption of international norms by the domestic legal system (Anufrieva 2002; Chernichenko 1999; Gaverdovsky 1980; Gavrilov 2005; Mingazov 1990; Mironov 1968; Mullerson 1982; Usenko 1995; Zimnenko 2005, 2006). More recently Russian specialists started examining legal harmonization

and unification through international agreements (Bakhin 2002; Mamutov 1999; Vilkova 1998) and model norms, developed in different international fora (Bakhin 2003). This approach is similar to international law studies in other countries (see, for example, Buxbaum and Hopt 1988; Buxbaum et al. 1991; Fazio 2007). Hence, and in a nutshell, Russian studies in international law has concentrated on the 'dialogue between international law and national law' (Yaremenko 2007), that is on a process in which Russia participates in drafting norms and then incorporates them in its national legislation by various means. A specific approach to legal approximation between Russia and a third country, or a block of countries, like the EU, does not exist.

At the same time, the EU-Russian Partnership and Cooperation Agreement (PCA) presupposes exactly this case of horizontal convergence. It recognizes 'that an important condition for strengthening the economic links between Russia and the Community is the approximation of legislation'; it also puts the burden of implementation on Russia, which 'shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community' (Russian Federation and the European Union 1994, article 55). The PCA is a fine example of the unilateral way legal approximation is handled. It effectively means that Russia has to carry the burden of change towards the EU's *acquis*, which has been drafted with no attention to the needs of Russia. Another problem with this approach is that it hinges on the total approximation as opposed to agreeing on the goals and leaving it to the partners to decide on the instruments to achieve them.

The goal of legal approximation in EU-Russian relations was confirmed in a milder way in the 'Roadmap for a Common Economic Space' in 2005. It reads that its objective is the 'development of harmonised and compatible standards, regulations and conformity assessment procedures, where appropriate, including through enhanced regulatory dialogue and cooperation between responsible institutions and a reinforcement of the institutional capacities' (Russian Federation and the European Union 2005). The reference to Russia just copying the EU's legislation thus disappeared (in comparison to the PCA), but a new approach to bringing two sets of legislation closer together did not emerge. Hence, legal cooperation between the EU and Russia was left in a conceptual vacuum.

There have been suggestions on how to leave this impasse. The Russian-European Centre for Economic Policy (RECEP) in the early 2000s, for instance, provided a venue for the development of a horizontal concept of legal approximation in Russia. However, most analysts

just copied the EU's definition, dodging the question of Russia not participating in the development of the EU's norms. Kashkin defined the process of harmonization as 'a softer method of legal integration', which 'does not mean total uniformity but is rather based on the convergence of legislation of various states' (2005: 9). He also tried to alleviate the problem of Russia's unilateral reception by recommending that the EU takes into account Russian interests while adopting new legislation (Kashkin 2005: 23), which for the moment remains just wishful thinking. Isaev, in turn, described harmonization as 'convergence of systems of legislation, integration of key principles and parameters of legal systems with national specificity taken into account' (2005: 6). In other words, he tried to extrapolate on Russia the principle, which the EU applies internally, the flexibility as to the instruments, used to achieve the goal. Entin emphasized that the EC's legal system is external for Russia and therefore Moscow tends to interpret legal harmonization as 'convergence, or mutual movement to a desired legal reality', whereas the EU expects third countries to 'receive' all the *acquis* as they are, unchanged (2006: 330). He, therefore, contrasted the Russian international law approach with the one that the EU applies to third countries. Finally, Romanova (2005) mentioned that not all the EU's *acquis* could be incorporated in the legislation of third countries because EU's rules were not necessarily a solution to their problems.

Surprisingly, no attention was paid to the fact that legal approximation between the EU and third countries can be examined as a multi-level process. This multi-level process is a logical development of the EU's current minimalist approach to legal approximation. For its members, the EU distinguishes between the goals and the means to be achieved, providing for flexibility. Legal approximation between the EU and a third country should provide for the flexibility at the implementation level as well.

This differentiation between various levels is the basis of the new approach to legal approximation, which is advanced in this chapter. It is designed for the relations between the EU and a third partner that does not aspire to join the EU. Three levels can be clearly identified in any such process of legal approximation – strategic goals, policy goals and implementation.

The first level is one of strategic goals. Russia and the EU define their goals as cooperation and strategic partnership. Both partners also agree that their cooperation is supposed to promote democracy, human rights and the rule of law. This is also the level where equality between the partners, a fundamental notion of Russian foreign policy, is to be guaranteed. In terms of legal approximation this means a joint

definition of goals. Finally, the notion of trust in the partner, and in their legal system, is located here. The basics of this level are spelt in the PCA and other EU-Russian bilateral acts. It is also nurtured by the cooperation in various international bodies where both Russia and the EU are (future) equal members (like the UN, Council of Europe, Kyoto Protocol, or WTO).

The next level in the new approach to legal approximation is that of policy goals. A good example in the field of energy would be the development of renewable energy sources (RES) or limiting the harmful environmental impact stemming from the use of energy. Another example is the construction of a common European energy market characterized by a free movement of goods and services, and by consumer protection. Relevant provisions are fixed in both PCA and energy-related documents.

Finally, the third level is that of implementation. It is about how policy priorities are brought to life. Examples that come to mind are measures to stimulate the development of RES, like feed-in tariffs or green certificates. Technical harmonization (i.e. harmonization of various standards) is also located on this level. This is also the level of various institutional provisions of legal approximation, that is the cooperation between legislative assemblies, transnational dialogues, adjudication, private sector support and other.

The top, strategic level of our approach is mostly about politics; policy goals are set out for both political and economic reasons; implementation measures are, by contrast, mostly defined by specific economic realities, by cultural specificity, by a particular configuration of public-private factors and by the very problems which are to be solved while achieving the policy goals (see Table 1.1).

To shed more light on the suggested three-level approach to legal approximation, the next section applies this new approach to two selected domains of EU-Russian energy relations: market-making and

Table 1.1 Three levels of the new approach to legal approximation and their determining factors

Level		Determining factor
Strategic goals	→	Political reasoning (high politics)
Policy goals	→	Political and economic reasoning (low politics)
Implementation mechanism	→	Economic realities Cultural specificity Public-private relations

clean energy. The cases are chosen because of the vivid contrast between the success of clean energy on the one hand and the blunt failure in market-making on the other, which calls for explanation.

The explanatory power of the three-level approach will be explored through three guiding questions. The first one is how important it is to allocate issues in the legal approximation process to the right level, and what are the consequences of an incorrect allocation. The second question is what sort of goals' definition (both strategic and policy-related) should be exercised, and whether they can be defined exclusively by one party, or whether there is a strong need for joint ownership. The third, and final, one is whether there is a need for the flexibility at the implementation level of legal approximation between the EU and a partner that does not aspire to become an EU member state.

3. EU-Russian energy relations through the prism of the new approach to legal approximation

EU-Russian energy cooperation was scarcely mentioned in the PCA, and there was no reference to it in article 55 of the PCA on legal approximation. The reason for this is that energy was expected to be regulated by the Energy Charter Treaty 'against a background of the progressive integration of the energy markets in Europe' (Russian Federation and the European Union 1994, article 65). However, Russia has never ratified the Energy Charter Treaty, which left EU-Russian energy cooperation with no clear legal basis.

At the same time, energy to date has been the most intensive field of EU-Russian cooperation. According to official estimates, 74 per cent of their bilateral trade comes from mineral fuel and related energy goods.¹ The EU imports about 60 per cent of Russian natural gas exports, which is about 20 per cent of the EU's consumption. EU member states are also a destination for 50 per cent of Russian oil exports, which amounts to about 34 per cent of the EU's consumption (European Commission 2010b, c). According to some unofficial Commission estimates, the EU also gets about 40 per cent of its nuclear materials for power plants from Russia. Finally the EU is the source of new energy-saving technologies for Russia as well as ways of producing RES and improving energy efficiency.

To fill the legal vacuum, which emerged following Russia's non-ratification of the Energy Charter Treaty, the EU and Russia have relied on general PCA provisions, of which article 55 on legal approximation was one. In addition, a political process, the EU-Russian energy dialogue,

was set up in 2000 to 'enable progress to be made in the definition of an EU-Russia energy partnership and arrangements for it' (Russian Federation and the European Union 2000). Currently it is the longest functioning EU-Russian dialogue, which pompously celebrated its tenth anniversary in autumn 2010.

In the field of EU-Russian energy cooperation two focal points emerged: the development of energy markets and the improvement of trade and investments – the market-making agenda; and energy efficiency, the development of RES, curbing CO₂ emissions and related environmental aspects – the clean energy agenda. Both, however, differ with regard to the progress that has been made. This point is further explored in this section.

3.1 The success: Clean energy agenda in EU-Russian energy relations

The 1994 PCA identified clean energy as a promising field of cooperation. In particular, its article 67 included cooperation in 'promotion of energy saving and energy efficiency' and in limiting 'the environmental impact of energy production, supply and consumption', whereas article 69 contained provisions on environmental cooperation (Russian Federation and the European Union 1994). However, cooperation in clean energy had a relatively slow start. Most attention was captured by the security of supply and producer–consumer relations, whereas energy efficiency, RES and environmental impact of energy use escaped the limelight.

Nevertheless, today's results look impressive. In 2004, Russia completed the ratification of the Kyoto protocol. In 2003–04 Brussels and Moscow agreed in the International Maritime Organization to phase out single-hull tankers for oil transportation. Furthermore, Brussels and Moscow carried out extensive discussions on gas flaring. Eventually, the Russian government adopted a decision (Russian Federation 2009c), which obliges oil companies to utilize 95 per cent of the accompanying oil gas by 1 January 2012.

In the area of energy efficiency, the EU and Russia set up demonstration projects in Archangelsk, Astrakhan and Kaliningrad. In 2001, Russian participants were integrated in the Organisation for the Promotion of Energy Technologies (OPET), which brings together companies working in the field of RES and energy efficiency. An EU-Russian Energy Efficiency Initiative was set up in 2006, which became a platform for discussions on both legal and policy-related issues. Numerous projects in these fields were carried out by the EU and Russia virtually every year.

The discussion was coordinated by a special EU-Russian thematic group, set up permanently in 2009. Finally, a Common Spaces Facility project on energy efficiency was launched in 2010 to provide financial support for clean energy projects.

To what extent does the three-level approach to legal approximation explain the obvious progress in this issue-arena? Firstly, the issues have been neatly allocated to their level. At the strategic level, Russia has invested a lot in green energy initiatives to demonstrate that it is in the club of 'good' countries, supporting innovative approaches to energy use. Recently, Russia even started promoting the concept of environmental donorship, according to which the environmental status of a country is determined not only by its CO₂ emissions but also by how much global good (for example, forest sinks, provision of natural gas, which improves energy efficiency etc.) it supplies (Russian Federation 2009d). In sum, a growing political meaning is attached to the promotion of clean energy: the idea is that it is not only about environmental protection per se but also about increasing the overall weight of Russia in the international arena. It is parallel to the EU's quest for global environmental leadership (Bretherton and Vogler 2006).

Secondly, the EU and Russia specified policy-related goals carefully. They also managed to considerably converge their definition of these goals. The EU's 2006 Green Paper proclaimed three goals, of which clean energy is one (European Commission 2006b). Russia's 2003 energy strategy stressed an increase in energy efficiency and the minimization of environmental impact of energy as priorities (Russian Federation 2003). The 2009 Russian energy strategy put 'energy efficiency' and 'environmental safety of the energy sector' among four 'strategic guidelines of the long-term state energy policy', whereas development of non-fuel energy (i.e. nuclear, RES) and energy saving are among five strategic initiatives (Russian Federation 2009a). Moreover, most of the goals were either set by the EU and Russia individually or defined in close cooperation within the framework of international organizations, in which both have been equal partners (e.g. the Kyoto protocol or the International Maritime Organization). That means Russia's right to participate in the decision-making and to define the priorities are on par with the EU, which greatly decreases any unilateral character of legal approximation.

Thirdly, the EU and Russia converged at the third, implementation, level as well. The definition of their specific goals is identical. The EU proclaimed in 2007 and then legislatively fixed the so-called 20-20-20 goals. These are 20 per cent reduction in CO₂ emissions compared

to 1990 levels, 20 per cent improvement in energy efficiency and 20 per cent increase of the share of RES by the year 2020 (European Commission 2008a, b, 2010a; European Council 2007). Russia, for its part, put forward its 2003 energy strategy, setting the goal of improving energy efficiency by factor two. The 2009 energy strategy stipulates an increase in energy efficiency by 45 per cent by 2030. It also intends to increase the production of renewable sources of energy. The amount of hydro-power is to grow from the current 47 mln kWh to 57–59 mln kWh (although its share in the energy balance will slightly decrease from 20.6 per cent to 18.3–19.7 per cent). The share of other RES is projected to increase from 1.5 per cent in 2008 to 4.5 per cent in 2020. In total, RES will make up 20 per cent of the Russian energy balance in 2020, which exactly mirrors the EU's goal (Russian Federation 2003, 2009a). On top of it, Russia has also become active in reducing CO₂ emissions. The current message of Moscow is that regardless of whether the global warming is driven by the CO₂ emissions or not, Russia is determined to win on improved energy efficiency, better energy transportation and overall modernization of the sector.² The importance of the energy sector for decreasing Russian CO₂ emissions is also confirmed by the 2009 Russian Climate Doctrine.

The EU and Russia also saw convergence at the level of implementing instruments. There is a stunning similarity between energy efficiency and energy saving initiatives of Russia (Russian Federation 2009a, b) and the EU (Council of Ministers 1992; European Commission 2005, 2006a, 2008b; European Parliament and the Council 2000, 2009). Both provide for stipulations on energy efficiency labelling of electronic appliances, phasing out of incandescent light bulbs, improvement of energy and heat efficiency in buildings or compulsory energy efficiency audits of public buildings.

Finally, there is no institutional barrier in clean energy, such as historical stakeholders, that would block innovation. The field is mostly occupied by small and medium companies, which are interested in policy and standards' convergence to be able to move freely across the border with low transaction costs.

To sum up, the clean energy arena presents us with the case of clear allocation of issues to their levels. This cooperation reinforced certain strategic goals, like equality and environmental donorship, for which Russia strives, or the EU's leadership in environmental affairs. The goals in clean energy were defined jointly by the EU and Russia, either within international fora or individually and yet simultaneously. This alleviated the problem of a unilateral character of legal approximation,

forcing Russia to align its legislation with the already adopted EU norms. Finally, implementation mechanisms were left to the parties, but they converged as well.

3.2 The failure: Market-making in the EU-Russian energy relations

The results of the market-making agenda of energy relations have so far been much more modest. As such, market-making has never been specifically mentioned in the PCA. Its article 65 talks only about cooperation in 'formulation of energy policy', 'improvement in management and regulation of the energy sector in line with a market economy' and 'the introduction of the range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment' (Russian Federation and the European Union 1994).

The crux of this cooperation is the EU's belief in the liberal paradigm, that is in free markets, which is supposed to provide for the most efficient and consumer-friendly organization of the sector and 'the best way of ensuring safe and affordable energy supplies' (EU 2006). Accordingly, Brussels would like to see Russia aligning its legislation on natural gas and electricity with the EU's liberalization processes, including the ongoing process of unbundling, that is the break-up of vertically integrated companies into upstream, midstream and downstream businesses to guarantee equal access of all producers to various pipelines and electricity lines. Moreover, because of the high external dependence on a limited number of sources, liberalization in the EU itself would only come true if the EU's suppliers went through unbundling. Thus the EU's internal processes put pressure on the Commission to promote liberalization externally. Finally, the demand for liberalization was the only type of external energy action, which the EU as a whole could promote. The intricate division of competences between the EU and its member-states makes the former responsible for the internal market and liberalization and therefore also for the external dimension of liberalization. National bodies, by contrast, preserve their authority in energy security and energy mix.

The EU used various ways to promote liberalization. It drafted the Energy Charter and its Treaty in accordance with the EU's legislation of the early 1990s. It held discussions with Russia to explain the benefits of liberalization and to encourage Russia to 'mimic' these provisions (McGowan 2008; see also Bressand 2010; Romanova 2003, 2009). Moreover, it tried to impose on Russia the unbundling of transportation

in the natural gas sector, an increase in internal gas prices and a ban on Gazprom's export monopoly by means of the terms of Russia's accession to the WTO. The Commission also tried to limit Russian investments in the EU's energy sector until Russia complies with the EU's liberalization legislation, though it only succeeded in persuading member states to have it as an option, which can be applied by national authorities.

Russian expectations of energy cooperation with the EU were entirely different (Romanova 2008). The liberalization of the Russian electricity sector was implemented in a similar way as the EU's. However, Russia has resisted all EU attempts to liberalize its natural gas sector, which in 2008–09 led to a heated politicization of the energy dialogue. In fact, two related goals of the 2003 Russian energy strategy were 'to create conditions for the financial and economic stability of the energy structures and institutions' and 'to ensure innovative development of the sector through its dramatic modernization' (Russian Federation 2003). The 2009 energy strategy made market-related goals even more precise (Russian Federation 2009a). One is energy security with regard to possible threat arising on a domestic level, for example from depreciated equipment and old infrastructure, a lack of investments, high dependence on natural gas, and underdeveloped Eastern Siberia and Far East. The second goal is budgetary efficiency, or the ratio between what the government spends on the energy sector and the returning profit in the form of tax revenues and income from company shares, owned by the state.

In the light of this, it is hardly surprising that positive results of the market-making agenda in EU-Russian energy dialogue have been limited. The best-known one is the resolution of the conflict over long-term gas contracts, which since the 1970s have formed the legal basis for the natural gas supply from the Soviet Union/Russia to EU member states and provided a guarantee for huge investments in gas fields' development and in pipelines' construction. The contracts were preserved but some conditions were altered. Another success is a feasibility study on the synchronous interconnection of EU and Russian electricity grids. It is, however, a paper success because its implementation was postponed indefinitely.

The first and possibly most illuminating conclusion from the market-making interaction of the EU and Russia is that their conflict is not so much one of a paradigmatic collision of 'state versus market'. In fact, liberalization, which is promoted as a policy goal of the EU, is actually an implementing measure, which derives from the EU's market philosophy. The same goes for Moscow's goal of budget efficiency in the energy

sector, which is nothing but an implementing measure. Thus, the most serious problem of EU-Russian market-making agenda in energy is the confusion between the level of policy goals and that of implementation.

If liberalization and budget efficiency are only implementing measures, then the question is what the policy goals are. They are, apparently, an efficient organization of the sector, stable investment flows and security of supply as well as consumer protection and the construction of the single market. And, in this way, the EU's and Russian goals are perfectly compatible.

However, their implementation varies. It is exactly here where the second flaw of the market-making agenda occurs: in their conflict about market-making modalities, the EU and Russia failed to account for specificity and to provide for flexibility at the implementation level. Moreover, some powerful players resist the liberalization agenda both in the EU (incumbent energy companies) and in Russia (for example, Gazprom).

Thirdly, and finally, the EU tried to impose its vision on Russia, which challenged Russia's internal definition of its policy goals. In other words, there was no shared ownership. Rather, the interaction was structured along a unilateral pattern with the EU imposing its vision, its goals and Russia rejecting the process as much as it was rejecting the substance of interaction. Moreover, the idea to construct the single market on the basis of the EU's vision undermined the fundamental principle of equality, cherished by Russia at the strategic level. The idea to spread the EU's paradigm was also viewed in Moscow as an effort to make Russia step back from its sovereign right over natural resources and from the right to regulate access to them, which also contradicts the strategic thinking of Russia.

To sum up, market-making legal approximation in the EU-Russian energy dialogue failed because of the confusion among the three levels, a lack of implementation flexibility and a lack of a shared definition of goals, that is, due to the unilaterality of the process. On top of it, fundamental concepts (like critical for Russia equality or sovereignty over resources) were challenged.

4. The three-level approach to legal approximation in EU-Russian energy relations: Where to go next?

The application of the new three-level theoretical approach to legal approximation to the experience of EU-Russian energy relations is illuminating and at the same time raises a number of policy implications.

4.1 Avenues for future research

With regard to the initial questions guiding the case studies, various conclusions can be drawn. First, with regard to whether careful allocation of issues to the specific (strategic, policy-related or implementation) level was essential, our cases indicate that the success of the clean energy agenda was to a considerable degree motivated by the EU and Russia carefully identifying the policy goals and implementing measures. On the other hand, the failure of the market-making agenda has been predetermined by the confusion between policy goals, on the one hand, and implementing measures, on the other hand. To further complicate the situation, the parties overlooked policy goals due to excessive attention to implementing instruments.

The second question, put forward before the case studies, was about the need to jointly define both strategic and policy goals. Again, the success of the clean energy agenda has been predetermined by it being defined through the international fora, where both the EU and Russia are equal members, or by their convergence in the goals, being defined internally. Both things alleviated the problem of unilateralism in EU-Russian legal approximation. In addition clean energy agenda, in fact, reinforced strategic goals, which the EU and Russia pursue both individually (for example, equality for Russia) and together (environmental leadership, cooperation). The market-making agenda, again, presented a negative experience. At the policy goal level, the EU tried to impose its own goals rather than to listen to the Russian ones and to make an effort to come to some common ground. In essence, the talk was about Russia's unilateral alignment of its legislation to that of the EU, with little account for the interests of Russia or for its internal problems. On top, this approach challenged two fundamental strategic ideas that Russia cherishes, these are equality among key powers of today (of which the EU and Russia are two, according to Moscow's thinking) and sovereignty over natural resources.

Finally, the third question that has been explored is that of the need for flexibility at the implementation level. Generating clear-cut answers on this point faces clear limitations due to the small number of investigated cases. What can be said is that the clean energy agenda presents a situation of complete convergence in both policy goals and implementing mechanisms while market-making agenda demonstrates the fallacies of the lack of flexibility at the implementation mechanism.

There are at least three reasons, which call for sufficient flexibility at the level of implementation. One is historical legacy and traditions. In our case 'the EU suffers from an inherent embedded liberal bias that

automatically puts policy formation in the gas sector within a neo-classical framework' (Van Der Meulen 2009: 843). Russia, on the other hand, is characterized by the belief that state participation is the key to ensure the highest profit and most efficient organization of the energy sector. This idea is reinforced by the Russian history of state (not private) modernization. Another reason for the implementation flexibility is that various partners frequently have to solve divergent problems on the way to the same goal. In our market-making agenda, the EU strives to decrease prices for final consumers while Russia has to increase them (especially for households) and to eliminate cross-subsidization among different consumers and geographical zones. The EU has to preserve a certain level of investments while Russia has to mobilize additional flows to modernize its outdated sector with swiftly depreciating production and transportation capacities. Last but not least, flexibility at the implementation level will take into consideration existing stakeholders. Dynamic small and medium enterprises, which are active in clean energy field of EU-Russian cooperation, support greater legal approximation and do not have the capacity to resist changes. On the other hand, big energy players in the field of market-making well function in a non-market situation and resist changes, which would undermine their status.

Further studies are needed to prove our new, three-level approach to legal approximation. It is particularly necessary to clarify the need for flexibility. An additional question, which is to be considered, is the extent to which flexibility of implementation can be tolerated. In other words, what difference in the implementation mechanisms does not distort policy goals? This dilemma remains an issue of concern not only for EU-Russian relations but also for EU internal affairs.

Another dilemma to be resolved is the relative importance of the three levels and the extent to which they influence each other. In other words, the question is whether policy goals' convergence can be the main lynchpin for effective legal approximation. Or does it need a prop from strategic level in the form of equality and also in the form of the overall trust in the political and legal systems of the partner. This is a peculiar problem that characterizes EU-Russian relations (as well as Brussels' dialogue with other third countries and even with some member states).

4.2 Policy consequences

Despite the clear need for future studies, however, some policy recommendation can already be identified. The three-level approach to legal

approximation provides some ground for optimism in relation to the market-making agenda of EU-Russian energy relations.

Firstly, market-making cooperation should be addressed from the position that grants equality to Russia and decreases the unilateral character of approximation. One option would be to involve international organizations, where both the EU and Russia are (prospective) members. From this point of view, the fastest accession of Russia to the WTO and all its mechanisms is crucial. Moreover, despite the Russian decision not to ratify the Energy Charter Treaty, it remains bound by it for the years to come. Moscow's ideas about a new global energy regulation can also be dealt with in that organization. Furthermore, discussions on energy in the framework of the G-8 are critical for the convergence in strategic visions. At the interstate level a useful instrument, which is frequently overlooked, is a network of bilateral investment treaties (see Dreyer 2009; Erixon 2008; Romanova 2003). Their potential in EU-Russian relations increased due to the recent communitarization of the EU's external investment policy in the Lisbon treaty (EU 2007).

Secondly, EU-Russian energy market-making should be addressed at the policy goals' level. These are quite compatible: both sides strive to encourage investments, to provide for security of supply, to guarantee fair price to final consumers and to ensure an efficient organization and a common market in the long run. Instruments to achieve these goals are different because the EU and Russia have different traditions (market-oriented vs. state modernization) and also because they have different problems to solve on their way to the pursued goal.

Approaching market-making legal approximation from this point of view will help avoid mixing policy goals with their implementation mechanism and will provide for a needed degree of flexibility in the implementation. This is also consistent with the minimum harmonization and negative integration (based on mutual recognition and maximum flexibility) that dominate in the EU. Above all, it will alleviate the problem of Russia's unilateral harmonization with the EU's norms and rules. This strategy is not meant to deny the positive sides of liberalization and competition but rather to say that Russia is not (yet?) ready for it.

These shifts will open the way for more constructive EU-Russian energy relations, which will ultimately benefit both sides, both the public and the private sector. It will also be another step to stabilize regional and global energy markets.

Notes

1. Calculated by the author on the basis of the data provided by the European Commission (2010b) and Eurostat (2010). According to some other sources (Russian Federation and the European Union 2010), only 65 per cent of EU-Russian trade comes from energy.
2. The 2009 energy strategy specifies that the Russian energy sector is the key polluter; it causes 50 per cent of harmful emissions in the atmosphere and about 20 per cent of discharge in rivers, lakes and other water reservoirs.

Bibliography

- Anufrieva, L.P. (2002) *Sootnoshenie mezhdunarodnogo publichnogo i mezhdunarodnogo chastnogo prava: pravovye kategorii* (Moscow: Spark).
- Bakhin, S. (2002) 'Pravovye problemy dogovornoj unififikatsii', *Moskovskio zhurnal mezhdunarodnogo prava*, 1(45), pp. 12–43.
- Bakhin, S. (2003) 'Modelnoe pravo', *Pravovedenie*, 1, pp. 170–85.
- Basedow, J. and T. Kono (2000) *Legal Aspects of Globalisation, Conflicts of Laws, Internet, Capital Markets and Insolvency in a Global Economy* (The Hague: Kluwer Law International).
- Bordachev, T. and T. Romanova (2003) 'Model na vyrost: Vybor Rossii nadolgo opredelit ee otnosheniya s EC', *Rossiya v globalnoi politike*, 2, pp. 49–62.
- Bressand, A. (2010) *European Integration and the Development of a European External Energy Policy in Eurasia*, Policy Paper Series, 7 (Berlin: Global Public Policy Institute).
- Bretherton, C. and J. Vogler (2006) *The European Union as a Global Actor* (London: Routledge).
- Brütsch, C. and D. Lehmkuhl (2007) *Law and Legalization in Transnational Relations* (London: Routledge).
- Buxbaum, R.M., G. Hertig, A. Hirsch, and K.J. Hopt (eds.) (1991) *European Business Law: Legal and Economic Analyses on Integration and Harmonization* (Berlin: Walter de Gruyter).
- Buxbaum, R.M. and K.J. Hopt (1988) *Legal Harmonization and the Business Enterprise* (Berlin: Walter de Gruyter) (Integration through Law Series, European University Institute, Vol. 4).
- Carbonara, E. and F. Parisi (2005) *The Economics of Legal Harmonization* (Washington: George Mason University School of Law).
- Backer, L.C. (ed.) (2007) *Harmonizing Law in an Era of Globalization: Convergence, Divergence, and Resistance* (Durham, NC: Carolina Academic Press).
- Chernichenko, S.V. (1999) *Teoriya mezhdunarodnogo prava*, Vol. 1 (Moscow: NIMP).
- Council of Ministers (1992) Directive on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances. 92/75/EEC, 22 September.
- Cox, K.R. (1997) *Spaces of Globalization: Reasserting the Power of the Local* (New York: Guilford).
- Curtin, D.M., J.M. Smits, A. Klip, and J.A. McCahery (2006) *European Integration and Law* (Oxford: Intersentia).

- Cutler, A.C. (2003) *Private Power and Global Authority* (Cambridge: Cambridge University Press).
- De Foulloy, C. (1992) *Glossary of EC Terms* (London: Butterworths).
- Dreyer, I. (2009) 'Comment: EU Should Use International Law to Tackle Russian Energy Relations', *Business New Europe*, 9 April.
- Egan, M. (2006) 'The Single Market' in M. Cini (ed.) *European Union Politics* (Oxford: Oxford University Press).
- Energy Charter Treaty (1994) http://www.encharter.org/fileadmin/user_upload/document/EN.pdf, date accessed 15 May 2011.
- Entin, M. (2006) *V poiskah partnerskikh otnoshenii: Rossiya I Evropeiskii Souz v 2004–2005 godah* (St. Petersburg: Rossiya-Neva).
- Erixon, F. (2008) *Europe's Energy Dependency and Russia's Commercial Assertiveness*, ECIPE Policy Brief No. 07.
- European Commission (2005) Green Paper 'Energy Efficiency – or Doing More With Less', COM(2005) 265 final, 22 June.
- European Commission (2006a) Action Plan: 'Energy Efficiency: Realising the Potential', COM(2006) 0545 final, 19 October.
- European Commission (2006b) Green Paper: A European Strategy for Sustainable, Competitive and Secure Energy, COM(2006) 105 final, 8 March.
- European Commission (2008a) Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions '20 20 by 2020 – Europe's climate change opportunity', COM(2008) 30final, 23 January.
- European Commission (2008b) Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Energy Efficiency: Delivering the 20% Target', COM(2008) 772 final, 13 November.
- European Commission (2010a) Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth, COM(2010) 2020, 3 March.
- European Commission (2010b) EU Energy in Figures 2010, Brussels, 26 January.
- European Commission (2010c) EU-Russian Common Spaces Progress Report 2009, March.
- European Council (2007) Presidency Conclusions, 8–9 March.
- European Parliament and the Council (2000) Directive on Energy Efficiency Requirements for Ballasts for Fluorescent Lighting, 2000/55/EC, 18 September.
- European Parliament and the Council (2009) Directive, Establishing a Framework for the Setting of Ecodesign Requirements for Energy-using Products, 2009/125/EC, 21 October.
- European Union (EU) (1999) Common Strategy of the European Union on Russia, Cologne, 4 June.
- European Union (EU) (2006) An External Policy to Serve Europe's Energy Interests, Paper from Commission/SG/HR for the European Council.
- European Union (EU) (2007) Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Lisbon, 13 December.
- Eurostat (2010) EU – Russia Summit. EU27 Trade in Goods with Russia up by a Third in the First Nine Months of 2010.184/2010, 6 December.

- Fazio, S. (2007) *The Harmonization of International Commercial Law* (The Hague: Kluwer Law International).
- Finnemore, M. and S.J. Toope (2001) 'Alternatives to "Legalization": Richer Views of Law and Politics', *International Organization*, 55(3), pp. 743–58.
- Gavardovsky, A.S. (1980) *Implementatsiya norm mezhdunarodnogo prava* (Kiev: Vischa shkola).
- Gavrilov, V.V. (2005) *Ponyatie i vzaimodeistvie mezhdunarodnoi i natsionalnoi pravovykh system* (Vladivostok: Izdatelstvo Dalnevostochnogo Universiteta).
- Gill, S. and D. Law (1998) *The Global Political Economy – Perspectives, Problems and Policies* (Wheatshaf: Harvester).
- Gilpin, R. (2001) *Global Political Economy: Understanding the International Economic Order* (Princeton, NJ: Princeton University Press).
- Goldstein, J., M. Kahler, R.O. Keohane, and A.M. Slaughter (2000) 'Special Issue: Legalization and World Politics', *International Organization*, 54(3), pp. 385–703.
- Heinrich, A. (2008) 'Under the Kremlin's Thumb: Does Increased State Control in the Russian Gas Sector Endanger European Energy Security?', *Europe-Asia Studies*, 60(9), pp. 1539–74.
- Isaev, D. (2005) *Osnovnye teorii garmonizatsii zakonodatelstva v protsesse formirovaniya obschih prostranstv Rossiya-ES* (Moscow: RECEP).
- Johnson, D. and P. Robinson (2005) 'Introduction' in D. Johnson and P. Robinson (eds.) *Perspectives on EU-Russian Relations* (London and New York: Routledge).
- Kashkin, S. (2005) *Strategiya i mekhanizmy garmonizatsii zakonodatelstva Rossii i Evropeiskogo Souza, kak kluchevye komponenty ih effektivnogo vzaimodeistviya v XXI veke* (Moscow: RECEP).
- Keohane, R.O. and J. Nye (1977) *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown).
- Ku, C. (2001) *Global Governance and the Changing Face of International Law* (New Haven: ACUNS Report and Papers No. 2).
- Leebron, D.W. (1996) 'Lying Down with Procrustes: An Analysis of Harmonization Claims' in J. Bhagwati and R.E. Hudec (eds.) *Fair Trade and Harmonization: Prerequisites for Free Trade?, Volume I: Economic Analysis* (Cambridge, MA: MIT Press).
- Lynch, K. (2003) *The Forces of Economic Globalization – Challenges to the Regime of International Commercial Arbitration* (The Hague: Kluwer Law International).
- Mamutov, V.K. (1999) 'Sblizhenie sovremennykh system pravovogo regulirovaniya hozyaystvennoy deyatelnosti', *Gosudarstvo i pravo*, 1, pp. 41–51.
- McGowan, F. (2008) 'Can the European Union's Market Liberalism Ensure Energy Security in a Time of "Economic Nationalism"?', *Journal of Contemporary European Studies*, 4(2), pp. 90–106.
- Meessen, K.M. (2004) *Economic Law in Globalizing Markets* (The Hague: Kluwer Law International).
- Mingazov, L.S. (1990) *Effektivnost normy mezhdunarodnogo prava* (Kazan: Izdatelstvo Kazanskogo universiteta).
- Mironov, N.V. (1968) *Sovetskoe zakonodatelstvo i mezhdunarodnoe pravo* (Moscow: Mezhdunarodnye otnosheniya).
- Mistelis, L. (2001a) 'Is Harmonisation a Necessary Evil? – The Future of Harmonisation and New Sources of International Trade Law' in I. Fletcher, L. Mistelis, and M. Cremona (eds.) *Foundations and Perspectives of International Trade Law* (London: Sweet and Maxwell).

- Mistelis, L. (2001b) 'Regulatory Aspects: Globalization, Harmonization, Legal Transplants and Law Reform. Some Fundamental Observations' in R.M. Lastra (ed.). *The Reform of the International Financial Architecture* (London: Kluwer Law International).
- Mullerson, R.A. (1982) *Sootnoshenie mezhdunarodnogo i natsionalnogo prava* (Moscow: Mezhdunarodnye otnosheniya).
- Petrov, R. (2008) 'Exporting the Acquis Communautaire into the Legal Systems of Third Countries', *European Foreign Affairs Review*, 13(1), pp. 33–52.
- Petrov, R. and C. Hillion (2006) 'Sblizhenie zakonodatelstva v kontexte partnerstva mezhdru Evropeiskim Souzom i stranami Sodruzhestva Nezavisimyh Gosudarstv' in O. Potemkina (ed.) *Rasshirenie Evropeiskogo Souza i Rossiya* (Moscow: Delovaya Literatura).
- Prange-Gstohl, H. (2009) 'Enlarging the EU's Internal Energy Market: Why would Third Countries Accept EU Rule Export?', *Energy Policy*, 37, pp. 5296–5303.
- Rhodes, R.A.W. (1997) *Understanding Governance: Policy Networks, Governance Reflexivity and Accountability* (Buckingham: Open University Press).
- Romanova, T. (2003) *Stanovlenie Evropeiskogo Souza kak Mezhdunarodnogo Actora: Na Primere Investitsionnoi Deyatelnosti v Energeticheskom Sotrudnichestve s Rossiei v 1994–2001 godah* (St. Petersburg: St. Petersburg State University).
- Romanova, T. (2005) 'European Union-Russian Legal Approximation as the Basis for the Common European Economic Space: Opportunities and Barriers' in K. Khudoley (ed.) *European Union and Russia: 10 Years after Signing of Partnership and Co-operation Agreement* (St. Petersburg: St. Petersburg State University, European Studies Library No. 19).
- Romanova, T. (2008) 'The Russian Perspective on the Energy Dialogue', *Journal of Contemporary European Studies*, 16(2), pp. 209–20.
- Romanova, T. (2009) 'The Political Economy of EU-Russian Energy-relations' in G. Fermann (ed.) *Political Economy of Energy in Europe: Forces of Fragmentation and Integration* (Berlin: Berliner Wissenschafts-Verlag).
- Russian Federation (1999) Mid-term Strategy for Developing Relations with the EU for 2000–2010.
- Russian Federation (2003) Energeticheskaya strategiya Rossii do 2020 goda, Government Decree No. 1234-r, 28 August.
- Russian Federation (2004) Federal Law on the Ratification of the Kyoto Protocol to the UNFCCC. Federalnyi zakon 'O ratifikatsii Kiotskogo Protokola k ramochnoi konventsii Organizatsii ob'edinennyh natsii ob izmenenii klimata', No. 128-FZ, 4 November.
- Russian Federation (2009a) Energy Strategy 2030, Government Decree No. 1715-r, 13 November.
- Russian Federation (2009b) Federal Law on Energy Conservation and Improvement of Energy Efficiency. No. 261-FZ.
- Russian Federation (2009b) Federalnyi zakon 'Ob energosberezhenii i povshenii energeticheskoi effektivnosti i o vnesenii izmenenii v otdelnye zakonodatelnye akty Rossiiskoi Federatsii', No. 261-FZ, 27 November.
- Russian Federation (2009c) Government Enactment on Measures to Stimulate Reduction of Gas Flaring Emissions and Pollution. No.
- Russian Federation (2009c) Postanovlenie Pravitelstva Rossiiskoi Federatsii 'O merah po stimulirovaniu sokrascheniya zagryazneniya atmosfernogo vozduha produktami

- szhiganiya poputnogo neftyanogo gaza na fakelnyh ustanovkah', No. 7, 8 January.
- Russian Federation (2009d) Presidential Decree on the Climate Doctrine of the Russian Federation Klimaticheskaya doctrina Rossiiskoi Federatsii, Presidentskii ukaz, No. 861-rp, 17 December.
- Russian Federation and the European Union (1994) Partnership and Cooperation Agreement.
- Russian Federation and the European Union (2000) EU-Russian Energy Dialogue, Synthesis Report. Presented by Russian Vice-Prime Minister Victor Khristenko and European Commission Director-General François Lamoureux.
- Russian Federation and the European Union (2005) Roadmap for the Common Economic Space, 8 May.
- Russian Federation and the European Union (2010) Joint Report EU-Russian Energy Dialogue 2000–2010: Opportunities for Our Future Energy Partnership, November.
- Scholte, J.A. (2005) *Globalization: A Critical Introduction* (Houndmills: Palgrave Macmillan).
- Slaughter, A.-M. (2004) *A New World Order* (Princeton, NJ: Princeton University Press).
- Stone, D. (2004) 'Transfer gents and Global Networks in the "Transnationalisation" of Policy', *Journal of European Public Policy*, 11(3), pp. 545–66.
- Strange, S. (1994) *States and Markets* (London: Pinter).
- Strange, S. (1996) *The Retreat of the State: The Difusion of Power in the World Economy* (Cambridge: Cambridge University Press).
- Sun, J.M. and J. Pelkmans (1995) 'Regulatory Competition in the Internal Market', *Journal of Common Market Studies*, 33(1), pp. 67–89.
- Usenko, E.T. (1995) 'Sootnoshenie i vzaimodeistvie mezhdunarodnogo i natsionalnogo prava i rossiiskaya konstitutsiya', *Moskovskii zhurnal mezhdunarodnogo prava*, 2, pp. 13–28.
- Van Der Meulen, E.F. (2009) 'Gas Supply and EU-Russia Relations', *Europe-Asia Studies*, 61(5), pp. 833–56.
- Van Gerven, W. (2004) 'Harmonization of Private Law: Do We Need It', *Common Market Law Review*, 41, pp. 505–32.
- Vilkova, N.G. (1998) 'Metody unifikatsii prava mezhdunarodnykh kommercheskikh kontraktov', *Gosudarstvo i pravo*, 7, pp. 73–78.
- Wiener, J. (1999) *Globalization and Harmonization of Law* (London: Pinter).
- Wilets, J.D. (2009) A Unified Theory of International Law, the State, and the Individual: Transnational Legal Harmonization in the Context of Economic and Legal Globalization, http://works.bepress.com/james_wilets/1, date accessed 15 May 2011.
- Yaremenko, V. (2007) 'Aspekty soglasovaniya norm mezhdunarodnogo i natsionalnogo prava, a takzhe pravovykh sistem Rossiiskoi Federatsii I Evropeiskogo Souza', *Journal nauchnykh publikatsii aspirantov i doktorantov*, No. 3, <http://www.jurnal.org/articles/2007/uri3.html>, date accessed 15 May 2011.
- Zimnenko, B.L. (2005) 'Kompleksnaya norma kak element pravovoi systemy Rossii', *Mezhdunarodnoe publichnoe i chastnoe pravo*, 6, pp. 31–34.
- Zimnenko, B.L. (2006) 'Kompleksnaya norma kak element pravovoi systemy Rossii', *Mezhdunarodnoe publichnoe i chastnoe pravo*, 1, pp. 34–38.

Index

Note: The locators followed by ‘f’ denotes figures cited in the text

- Acquis communautaire, 27, 28, 68, 78
- Agency for the Cooperation of Energy Regulators, 58, 59, 235–6
- Agreement on Subsidies and Countervailing Measures, 55, 56, 57
- Agreement on Trade Related Investment Measures, 53
- aid, 91, 94, 95, 98, 100
- alternative energy sources, 248–9, 260, 262
- anti-dumping, 52, 53, 57, 58, 59
- Anti-Dumping Agreement, 58
- Belarus, 152–3, 169–74
- benchmark, 89
- best practice, 86–101
- building sector, 33, 118–24, 255
- business, 23, 24, 34, 71, 75, 195, 215–6, 219–20, 230, 233–4, 243–5, 251–2, 256, 258–9, 261
- capacity, 38, 75, 87, 92, 94, 223, 228–9, 232, 236, 238–9, 259
- carbon
 - capture and storage, 256
 - emissions, 7, 200, 203, 244, 254–5, 257
 - tax, 255
- cartelization, 211, 217, 221–2
- Central and Eastern Europe, 133, 177, 183
- Central Asia, 164, 170–1
- China, 72, 73, 97, 100, 152, 162, 212, 223, 247, 260, 262
- clean energy, 25, 30, 31, 32, 33, 37, 38, 249, 254
- climate change, 50, 60, 66, 70, 71, 72, 75, 76, 79, 80, 189, 194, 198–202, 235, 244, 249, 254–7, 260
- climate negotiations, 197, 259
- coal, 200, 212, 216, 246, 248, 257, 259
- cobweb cycle, 151, 155, 211, 217, 222
- command-and-control, 119–21
- Commonwealth of Independent States, 54
- companies, 23, 31, 33, 34, 35, 36, 57, 67, 71, 75, 76, 78, 89, 92, 195, 215–6, 221, 230, 238–9, 243–5, 247, 249–55, 257–63
- competition, 24, 39, 50, 51, 57, 88, 89, 90, 92, 93, 96, 97, 98, 99, 189–90, 192–6, 200–2, 213–6, 228, 231–4, 236–9, 243, 251, 260, 261
- competitiveness, 60, 66, 70, 71, 72, 79, 80, 96, 97
- convergence, 24, 25, 26, 27, 28, 33, 37, 38, 39, 78, 79, 96, 97
- cooperation, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 46, 68, 70, 72, 73, 74, 76, 77, 94, 98, 236, 254
- Copenhagen Accord, 259
- corruption, 91
- deregulation, 95, 189
- destination clauses, 237–9
- Developing and Transitional Countries, 50, 51, 52, 53, 59, 87, 94, 98, 249, 255, 258–62
- development, 249, 254
- Directive, 25, 78, 94, 232–6
- Directorate General for Competition, Environment and Climate Change, 235
- Directorate General for Energy, 202, 235
- discrimination, 54, 55, 57, 69, 232–3
- dispute settlement mechanisms, 211, 223

- Distrigaz, 237
 diversification, 122, 133–5, 157, 181–5
 Doha round, 50
 domestic market, 47, 56, 157–8
- E.ON, 213, 231, 237–8, 257
 electricity, 51, 34, 35, 86, 88, 91, 92,
 94, 100, 101, 200, 221, 230, 236,
 238, 248, 256, 259
 sector, 195, 198, 204, 230, 233–4,
 238, 248–9, 256, 258–60, 262
 emerging economies, 79, 196, 212,
 249, 251, 262
 emissions, 66, 73, 75, 96, 197, 200,
 244, 254–5, 257
 Energy Charter Treaty, 30, 34, 39, 52,
 68, 69, 211, 223, 232
 Energy Community Treaty, 96
 energy
 access, 57, 228, 233, 235, 238
 demand, 66, 70, 71, 72, 73, 75, 76,
 197, 210–3, 215–6, 218, 222,
 228–30, 239, 243–9, 251,
 258–60, 262
 diplomacy, 66, 71, 79
 efficiency, 30, 31, 32, 33, 66, 67, 68,
 69, 70, 71, 72, 76, 77, 78, 79,
 80, 94, 95, 96, 200–201, 248,
 254–7, 262
 intensity, 111–17, 246
 mix, 34, 121, 202, 246, 262
 policy, 32, 34, 45, 66, 67, 68, 71, 73,
 75, 76, 77, 78, 80, 87, 92, 94,
 95, 96, 97, 100, 149–51, 135–6,
 189–203, 244
 sector reform, 87, 88, 91, 92, 93, 94,
 97, 99, 100, 101, 194–5
 security, 34, 35, 48, 66, 67, 69, 71,
 72, 74, 75, 79, 80, 86, 87, 88,
 93, 94, 96, 97, 98, 99, 100, 101,
 189–90, 192–203, 214, 217,
 244, 249, 254–5, 258, 260
 supply, 66, 68, 69, 70, 71, 72, 73, 74,
 75, 93, 96, 192, 194–7, 210,
 212, 214, 216–8, 220–2, 228,
 231, 233–4, 237–9, 243–6, 251,
 253–4, 258–9
 technologies, 31, 70, 71, 73, 200,
 212, 216, 223, 230, 244, 254–6,
 259–62
 environment, 29, 31, 32, 33, 50, 59,
 60, 69, 73, 87, 92, 93, 94, 95, 96,
 101, 189, 195, 199, 223–4, 244,
 254, 257, 260
 equality, 28, 33, 36, 37, 38, 39
 EU (European Union), 20, 23, 24, 32,
 68, 73, 86, 87, 93, 94, 95, 96, 98,
 189–90, 193, 195–7, 201–3, 211,
 213, 227–8, 231, 233–40, 247,
 256, 260–2
 EU competition policy, 37, 196, 228,
 231, 235, 237–8
 EU Law, 23, 211, 220–1, 231, 234–5,
 237–8
 European Commission, 25, 30, 34, 35,
 40, 68, 69, 70, 71, 73, 74, 75, 93,
 94, 98, 99, 100, 101, 220–1, 228,
 233–8, 240
 European Convention on Human
 Rights, 234
 European Council, 71, 234–6
 European Court of Justice, 71, 72
 European gas market, 79, 214–5, 221,
 223–4, 227–30, 238, 240
 European Neighborhood Policy, 211
 European Parliament, 71, 72, 73, 75,
 235–6
 European Regulators' Group for
 Electricity and Gas, 236
 EU-Russia dialogue, 30, 31, 34, 35, 36,
 74, 75, 211
 EU-Russian Energy Efficiency
 Initiative, 31
 EU-Russian energy relations, 25, 29,
 30, 31, 36, 39, 77, 210, 214, 217
 external energy relations, 66, 67, 68,
 71, 73, 75, 77, 78, 94, 97, 105,
 211, 227, 238–9
- financial and economic crisis, 210,
 212, 228–9, 239, 259, 262
 forecasts, 76, 245, 252–3
 Forum for the Future's Climate Futures
 Scenarios, 253, 256–8
 fossil fuels, 69, 75, 191, 196, 223, 246,
 248, 255, 259–60, 262

- France, 77, 213, 234
 Fukushima, 210, 214, 218, 260
 futures markets, 219–20, 222
- G8, 96
- gas
 contracts, 35, 138, 151, 154, 174, 179, 215, 224, 227–34, 236–9
 dual pricing, 45, 47, 48, 53, 54, 55, 56, 57, 58, 60
 infrastructure, 220, 222, 236, 238
 markets, 79, 161, 183, 210–13, 215–23, 227–8, 230, 233
 pipelines, 34, 35, 54, 93, 97, 151, 158–60, 176–8, 213, 222, 238
 price, 35, 38, 48, 49, 51, 56, 57, 59, 60, 213–6, 218, 220–3, 227–31, 235, 238–9
 system, 232
 wars, 182–4
- Gas Exporting Countries Forum, 217
- Gazprom, 35, 36, 49, 51, 54, 55, 56, 142–4, 149–50, 156–62, 173–4, 184–5, 210, 213–4, 216, 221, 229, 233, 237, 257, 261
- GDF Suez, 213, 238, 257
- General Agreement on Tariffs and Trade (GATT), 50, 53, 54, 55, 59
- Germany, 59, 77, 78, 111–12, 114–18, 145, 153–6, 162, 172, 213–15, 221, 234
- good governance, 90, 92, 99, 100, 195–8
- governance institutions, 190, 195, 202, 211, 219–22, 235–6, 249, 260, 263
- Green Paper, 32, 69, 71, 94, 95, 96, 197
- greenhouse gas (GHG), 31, 32, 33, 66, 73, 75, 223, 254, 257
- harmonization, 23, 24, 25, 26, 28, 29, 39
- hub-based pricing, 227
- independent power project (IPP), 89, 91, 92
- independent system operator, 234
- independent transmission operator, 234
- industry, 49, 51, 56, 66, 70, 74, 77, 88
- infrastructure, 35, 75, 76, 93, 97, 196, 198, 216, 220, 236, 238, 261
- interfuel competition, 159–60
- internal market, 25, 26, 34, 95, 228
- International Energy Agency, 74, 75, 190, 230, 246, 249, 253
- International law, 24, 27, 28, 52, 60, 62
- International Maritime Organization (IMO), 31, 32
- International Monetary Fund (IMF), 90, 195
- Investment, 23, 31, 34, 35, 36, 38, 39, 49, 51, 67, 68, 69, 70, 71, 75, 76, 77, 78, 80, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 101, 195, 198, 200, 202, 211–12, 217, 231–2, 236, 240, 244, 247, 249–51, 255–6, 258–62
- Kyoto Protocol, 29, 31, 32, 197
- legal approximation, 23–30, 32, 33, 36–9
- liberalisation, 88, 90, 91, 99, 189–90, 193, 195–6, 203, 220–1, 228–9, 231, 239, 249
- liquefied natural gas, 210, 212–6, 223, 228–31, 239
- Lithuania, 131–8, 143–5
- long term contracts, 210, 213–5, 218, 227–33, 236–9
- low carbon, 71, 73, 256
 transition, 193, 199–200, 223, 249, 254
- Macondo, 260
- market
 liberalisation, 158–9, 161, 189, 192–4, 203, 220–1, 249
 pricing, 87, 179, 213–14, 261
 structures, 211, 237
- marketisation, 100, 190
- Monopolization, 48, 49, 145, 158, 227, 233, 239
- Most Favoured Nation (MFN), 54, 55

- Nabucco, 202
- national interest, 50, 236
- natural gas, 30, 32, 34, 35, 48, 49, 50,
51, 53, 56, 57, 60, 74, 130–40,
149–62, 169–85, 210–24, 227–34,
236–40, 246, 248, 257–9, 261–2
- National Oil Company, 261, 265, 266,
269, 270
- neo-liberalism, 86, 87, 89, 90, 91, 92,
99, 100, 101, 192, 196, 203, 243
- netback pricing, 174–5, 177, 227
- Netherlands, 227
- new institutionalism, 190, 192
- non-discrimination, 54, 55, 233
- norms, 24–8, 34, 39, 99, 190–1, 203,
218, 222
- nuclear energy, 30, 32, 214, 218, 246,
255, 257
- nuclear phase-out, 214
- oil, 30, 31, 69, 72, 73, 76, 88, 196, 215,
220, 227, 246–8, 257–8, 261–2
indexation, 213–5, 217–8, 227,
229–31, 239
price, 72, 214–5
- Organization for Economic
Cooperation and Development
(OECD), 100, 101, 249
- paradigm change, 35, 67, 71, 189–94,
201, 203, 227–9, 239
- Partnership and Cooperation
Agreement, 27, 68, 69, 73, 74
- permanent sovereignty over natural
resources, 46, 48, 51, 52, 60, 61,
62
- Poland, 130–8, 140, 222
- Policy
-making process, 190–2, 198–9, 203,
254, 259
narrative, 87–90, 93, 94, 96
options, 259
paradigms, 189–93, 201, 203
transfer, 86, 87, 89, 91, 93–5, 97–101
- Post-Soviet, 132, 169–70, 174
- price distortion, 94, 195
- privatisation, 88–92, 95, 96, 101, 190,
195–6, 243
- public awareness, 124
- Qatar, 212, 214, 216
- re-gasification, 213, 223
- regime analysis, 109–12, 115, 118–19
- regulation, 23, 25–7, 34, 39, 68, 78,
79, 87, 88, 90, 92, 95, 98, 101,
195, 211, 219–21, 223, 231–3,
235–7, 239–40, 243–4, 256, 260–1
- regulatory agencies, 89, 90, 92, 195,
231–2, 234–6, 239
- regulatory capitalism, 99
- regulatory convergence, 78, 79, 96, 97
- regulatory frameworks, 78, 87, 88, 89,
90, 94, 95, 96, 98, 99, 100, 211,
228–9, 231–2, 234–6, 239–40,
259–60
- regulatory oversight, 228, 234, 236
- renewable energy, 29, 33, 70, 71, 73,
74, 76–8, 99, 101, 195, 197–204,
216, 223, 246, 248–9, 255–7,
259–61
- residential sector, 248
- resource endowment, 50–52, 61
- risk, 79, 80, 91, 211, 214–7, 219–23,
233, 238–40, 250–1, 259–61, 263
sharing, 215, 240
- Russia, 23f, 45f, 66f, 88, 91, 97, 110,
115–8, 131–35, 139–140, 143,
190, 196, 203, 210, 216–7, 223,
232–3, 247, 261
- Russian energy policy, 190, 195, 196,
203, 232
- Russian-German Energy
Agency, 77
- Russia-Ukraine gas dispute, 194, 196
- scenarios, 244–6, 249, 251–9, 262
- Second Strategic Energy Review, 76
- securitization, 130–43, 154, 164, 171,
182
- security of supply, 31, 36, 39, 70, 71,
93, 95, 192, 195–7, 214, 216–7,
222, 231, 233, 239
- shale gas, 75, 210–4, 216, 222–4,
228–9, 239
- shell, 244, 253–4, 257–8
- short-term trading, 210, 227
- smart meter, 200, 258
- solar power, 248, 255–6

- sovereignty, 36, 37, 46, 49, 52, 59
- spot
 - indexation, 218
 - market, 210–11, 213, 215–16, 218, 229–31
- state owned enterprise, 88, 90, 243, 257
- state-trading enterprise, 53, 54
- statism, 45, 46, 89
- statoil, 210, 213, 237, 257
- stocks, 69
- strategic decisions, 244–5, 250–3, 258–9, 261–2
- Strategic Energy Review, 76, 94, 96
- structural adjustment, 89, 90, 99
- subsidies, 38, 47, 51–3, 55–8, 91, 94, 101
- sustainability, 66, 77, 94–6, 189, 201, 244, 254, 256–7
- sustainable development, 77, 113, 253
- take-or-pay, 210, 213, 215–7, 224, 227, 238
- technological innovation, 195, 212, 216, 244, 251, 254–6, 260–2
- Third country, 24, 26–8, 58
- third party access, 228, 231–6, 239
- trade, 23f, 45f, 66f, 213–5, 216, 220–1, 230–2, 234, 255, 261
 - governance, 45, 47
- transit, 67–9, 71–73, 76, 77, 80, 211, 233
 - protocol, 232
- transport, 31, 33, 34, 38, 51, 59, 69, 76, 196–7, 228, 232, 238, 247–8, 255–6, 259, 262
- two-tier pricing, 215
- UK Department of Energy and Climate Change, 194, 199–202, 243
- UK Foresight's Powering our Lives Scenario, 253–6, 258
- UK Office of the Gas and Electricity Markets, 195, 200–201, 203
- UK's Low Carbon Transition Plan, 199
- Ukraine, 73, 77, 97, 194, 196
- unbundling, 34, 88, 92, 96, 98, 228, 231, 233–6, 239
- United Kingdom, 113–15, 119–24, 159, 161, 189–90, 193–204, 213, 220, 229–30, 243, 253–6
- United Nations, 29, 46, 52, 62
- upstream, 34, 67, 69, 71, 76, 77, 78, 88, 157, 217, 231, 237–8
- Uruguay round, 54
- US market, 212, 229, 239, 258
- USA, 210, 212–13, 216, 220, 222–3, 227, 229, 247, 250, 258, 260, 262
- volatility, 216–17, 219–221, 224, 259–60, 262
- White certificates, 123–4
- White Paper, 115, 198
- World Bank, 51, 93, 195
- World Energy Council, 253
- World Trade Organization (WTO), 29, 35, 39, 45–62