



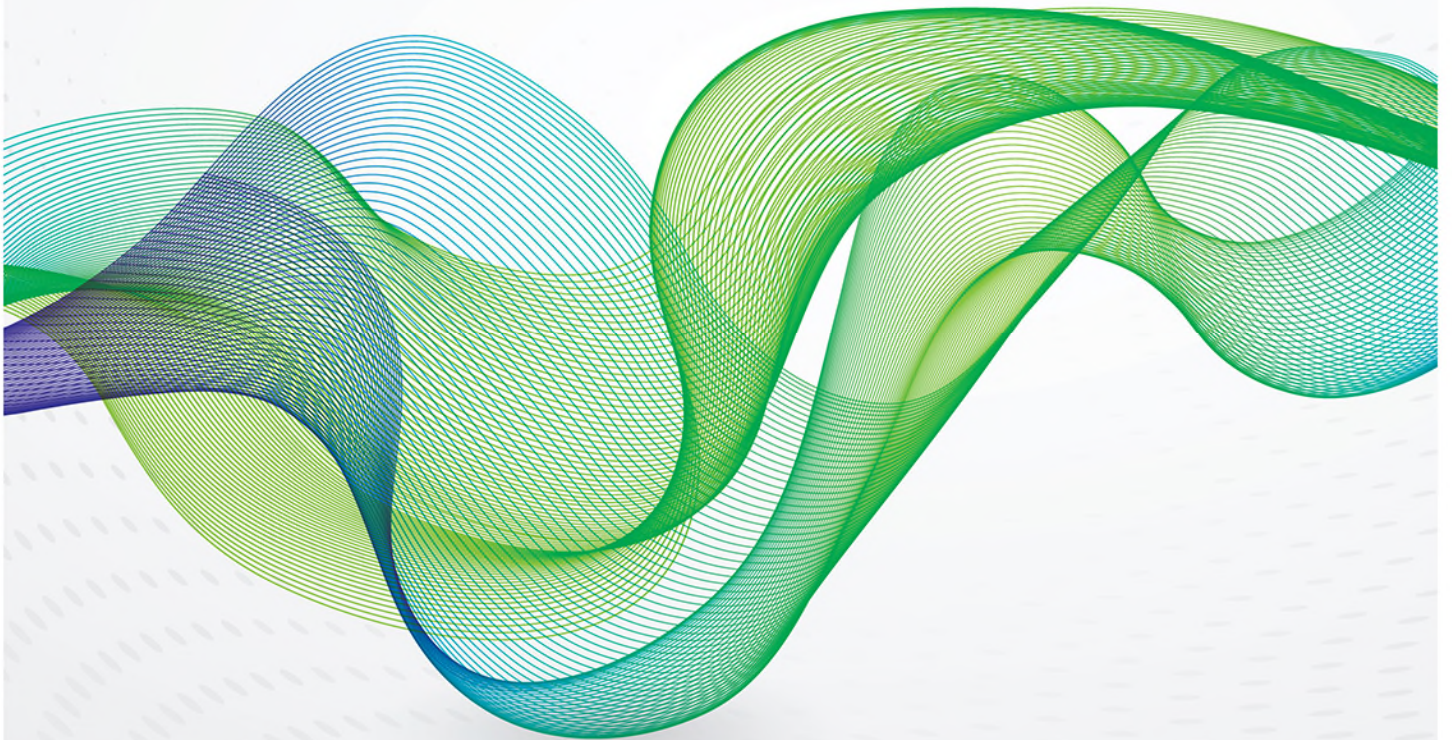
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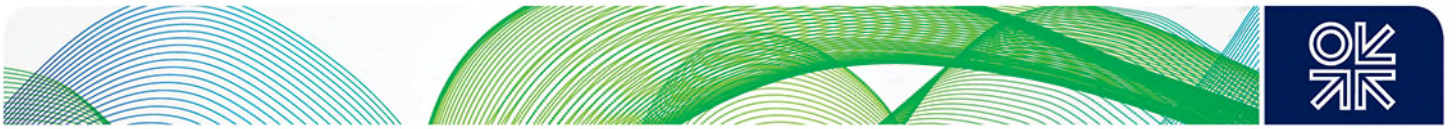
September 2016

Lithuania's Strategic Use of EU Energy Policy Tools: A Transformation of Gas Dynamics



OIES PAPER: NG 111

Vija Pakalkaitė

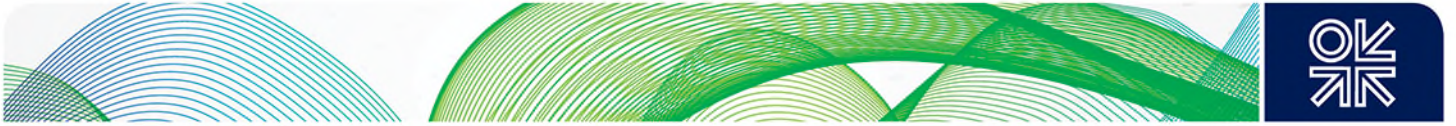


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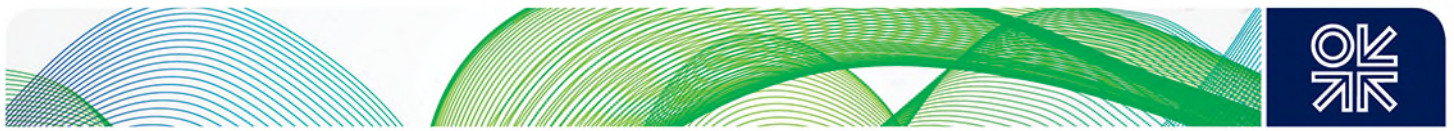
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Author's Foreword

This paper is a part of my more extensive PhD project 'Catalysts for reforms in the EU natural gas markets: cases of Hungary, Lithuania and Romania' at Central European University (CEU) in Budapest. I would like to thank Oxford Institute for Energy Studies for creating an opportunity to spend time at the Natural Gas Research Programme as a visiting researcher and learn from them. I wish to express my particular gratitude to Howard Rogers, the Director of the Natural Gas Research Programme and a Senior Research Fellow, Jonathan Stern, the Chairman of the Natural Gas Research Programme and a Senior Research Fellow and Katja Yafimava, a Senior Research Fellow, for their generous feedback. I would also like to show my appreciation to CEU for financing my stay at Oxford, and to my CEU Supervisory Panel, professors Andreas Goldthau, Nick Sitter and Marie-Pierre Granger for continuously encouraging me to provide the best results and apply to the best places to learn. Any errors that remain in the paper are my sole responsibility.



Preface

Lithuania is one of Europe's smallest national gas markets until recently reliant, in common with Latvia and Estonia, on imported Russian pipeline gas for all its natural gas requirements. After its accession to the EU in 2004, Lithuania became directly impacted by the developing body of energy market regulation, most notably the Third Package of 2009. While the country could have sought a derogation from the main requirements of the Package, it chose not to and instead embarked upon the difficult task of implementing supply chain unbundling. The subsequent successful execution of a project to build an LNG import facility completed the country's quest for gas supply diversification.

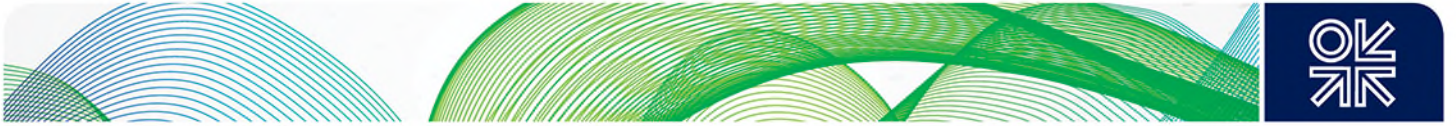
This paper by Vija Pakalkaite provides a detailed and comprehensive account and assessment of this process, incorporating material and insights gained from conversations with many of the key players involved. Its content will be of great interest to those in the fields of regulation and geopolitics, but for more general observers of the natural gas arena it provides, as a case study, a means of appreciating the practical implications of the EU regulatory frameworks at play.

The OIES Gas Programme has published a number of papers on aspects of EU regulation, particularly as it impacts import infrastructure, competition, business models and price formation. This paper is a valuable addition to this general research theme.

Howard Rogers

Oxford

September 2016



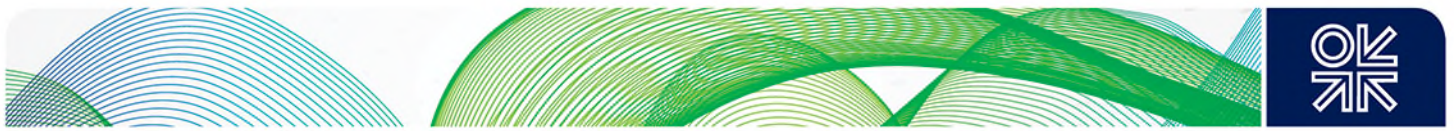
About the Author

Vija Pakalkaite is a PhD researcher at the Doctoral School of Political Science, Public Policy and International Relations, Central European University (CEU), in Budapest. She received a Master of Arts in Economic Policy in Global Markets at the same university in 2012. She also has a Master of Science degree in Economics and a Bachelor in Communications from Vilnius University in Lithuania.

Before coming to Hungary in 2010, Vija had worked as an economic journalist in Lithuanian business media for nearly six years. In Hungary, Vija completed a summer internship at the Regional Centre for Energy Policy Research (REKK) in Budapest in 2011. The internship resulted in a study of the Baltic region natural gas markets and the role of Russian gas supplier Gazprom.

During her studies at CEU, Vija also worked at the Bank of Lithuania on the country's euro adoption and was a trainee in the cabinet of Maroš Šefčovič, the Vice-President of the European Commission, in charge of the Energy Union.

Vija's current main research interests are energy policy and security of supply, especially in the natural gas markets of the European Union.



Executive Summary

In June 2016 Lithuania lost a case against the Russian gas exporter Gazprom at the Stockholm arbitration court, the resolution of which took nearly four years. This was one of the last of several legal actions between Gazprom and Lithuania deriving from the implementation of the Third Energy Package in Lithuania starting from 2010. This paper examines the power game between the main domestic and international actors: Lithuanian governments, the President, local energy and consumer companies, and international actors such as the energy companies Gazprom (Russia) and E.ON (Germany), and the European Commission.

From 2010 to 2016, the conflicting sides employed political, diplomatic and legal tools to influence the reform of the Lithuanian market according to their interests. The reform started, when in 2008 the newly elected conservative politicians formed the ruling majority. The new government used EU energy policy tools, such as the EU Third Energy Package of 2009, and the Security of Supply Regulation of 2010 to reform the domestic gas sector. They also made use of the general EU antitrust policy tools. Exploitation of these EU tools, or changes in domestic opportunity structures, became possible because at critical junctures, such as when the relevant EU energy regulations were negotiated and/or adopted in Brussels, Lithuanian political actors that were inclined towards gas supply diversification occupied positions of power in the country. In the spirit of the Third Energy Package lies the aim to provide choice for consumers and establish a competitive gas market. But Lithuanian political actors mainly used the Third Energy Package for their security of supply aims.

The Lithuanian case was the second case in the EU gas sector,¹ in which the European Commission participated in what were usually bilateral negotiations between a state entity and foreign energy companies, in this case Gazprom and E.ON. The European Commission not only acted as an advisor and a legal expert, but also co-signed a joint statement by representatives of the Lithuanian government and Gazprom. This reform also established a 'precedent' in the implementation of an ownership unbundling option that was envisaged in the Third Energy Package in a country where the Russian gas exporter, Gazprom, had an ownership interest in transmission.

After decades of dependence on a single natural gas supplier (Russia), the Lithuanian state reformed its natural gas market in just a few years. The shareholders of the main Lithuanian natural gas company, Lietuvos Dujos, initially responded by persuasion, legal and diplomatic tools, but eventually had to implement the gas transmission ownership unbundling option. The Lithuanian state bought the shares of Lietuvos Dujos. Simultaneously, the Lithuanian state established a liquefied natural gas (LNG) terminal on the shore of the Baltic Sea, which has been operational since the end of 2014. The paper also analyses how the gas market reform was 'locked-in'. It continued even after the centre-right government lost the next election in 2012, and left-leaning parties, that had previously opposed the reform, formed the Government of 2012-2016.

After Gazprom's price increase from 2011, Lithuania's total gas consumption has significantly fallen. The Lithuanian state energy companies are seeking to expand the consumer base in order to sell gas from the new LNG terminal, and this will impact future actions. To achieve this objective, they are diversifying the possible usages of gas and increasing the geographical scope of sales beyond Lithuanian borders. They are thus acting as 'agents of integration' towards a single Baltic gas market.

¹ The first case about the other case was Poland's negotiations with Gazprom in 2010 about long-term agreement on transit and extension of Russian gas supplies delivered through the 'Yamal-Europe' pipeline from Siberia to Poland and subsequently other European countries, soon followed by the Lithuanian case.

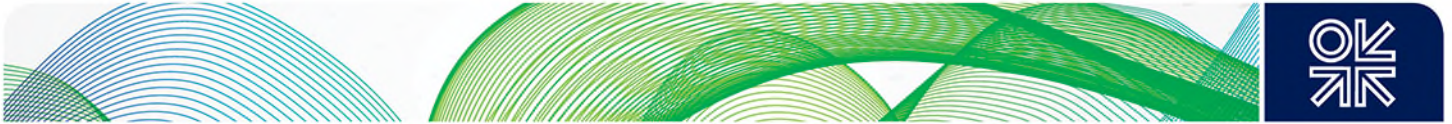


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1. Introduction

Even though the Lithuanian gas sector, with around 2.6 billion cubic metres (bcm) of natural gas consumption in 2015 is in European terms a very small market,² the recent events surrounding its natural gas market restructuring and regulation represent a prime example of the strategic use of EU energy regulations on an EU Member State at the national level. They show how far a government can go if it decides to reform the sector and how strongly incumbent energy companies may seek to defend the *status quo* they were accustomed to. The Lithuanian natural gas market has undergone rapid reform and has made a ‘U-turn’ since 2010. The reform came at a price for all the sides involved; yet the benefits of the changes for local consumers has just started to appear. Located north of Poland and northwest of Belarus (Figure 1), Lithuania was the first current EU Member State to be supplied by Soviet gas back in 1961.³ It also became the first EU country to implement ownership unbundling of its gas transmission system in which the Russian gas exporter, Gazprom, had an ownership interest. In addition, it broke Gazprom’s import monopoly in 2016,⁴ after opening an LNG terminal.

Figure 1: Natural Gas Transmission System in Lithuania and its neighboring countries, 2016⁵



This occurred after five decades of prevailing *status quo* of a single dominant gas supplier (Russia) to the country, two of them after the dissolution of the Soviet Union. The changes also came after years of the Baltic States (joint consumption of gas around 4.5 bcm in 2015) unsuccessfully discussing the

² Enerdata (2016).

³ Heinrich (2014), p. 29; Dienes and Shabad (1979), p. 75.

⁴ Reuters UK, “Norway to Surpass Russia as Lithuania’s Top Gas Supplier in 2016,” *Reuters UK*, February 8, 2016, <http://uk.reuters.com/article/lithuania-gas-idUKL8N15N1UF>.

⁵ European Network of Transmission System Operators for Gas (2016).



possibility to build a joint LNG terminal, and both separately or jointly diversify away from Russian gas via pipelines. Such discussions date back to the early 1990s, and also were the subject of some EU-sponsored studies, but eventually resulted in Lithuania, Latvia and Estonia each having one or two separate competing LNG project proposals without substantial progress on any of them.⁶

One important explanation for such changes is the country's accession to the European Union (EU) in 2004 and the consequent availability of EU energy policy tools. The country's political actors used the tools as 'a political resource' to improve their 'relative positions' in terms of the desired structure of the local gas market both on the domestic level and in the international arena *vis-à-vis* the political and other opponents of changes.⁷

Initially, during the early years of membership of the EU, this was not the case. In 2002-2004, the Lithuanian Government in two steps privatised the national natural gas transmission and supply company, Lietuvos Dujos, and, after selling 34% to German E.ON Ruhrgas (later increased to 38.91%) and 34% to Gazprom (later increased to 37.1%) became a minority shareholder (17.7% by 2011). Even though neither of the foreign shareholders had over one half of the shares in the companies, Gazprom and E.ON Ruhrgas International (E.ON) together held more than three quarters of the shares, which allowed these companies to make the major decisions in Lietuvos Dujos.⁸

After the privatisation, Lietuvos Dujos and Gazprom retained a long-term gas supply agreement for 2000-2015 that was signed in 1999.⁹ Based on the privatisation agreement of 2004, Gazprom had to supply Lietuvos Dujos no less than 70% of the Lithuanian gas demand minus the consumption of the fertiliser producer Achema and Kaunas Heat and Power Plant (Kauno Termofikacijos Elektrine, KTE). The agreement forbade Achema and KTE from reselling the gas that Gazprom supplied directly.¹⁰ As another intermediary company, Dujotekana, filled in the remaining 30% by also receiving and supplying Gazprom gas, the privatisation effectively facilitated market partitioning at the wholesale level. At the import level, there was a single supplier of gas: Gazprom. The company that could potentially have a role investing in the transmission system and new interconnectors to create possibilities for alternative supplies, Lietuvos Dujos, remained co-owned by Gazprom, which was also the monopoly supplier of gas.

Soon after the privatisation, in 2005-2006, Gazprom began increasing gas import prices to the Baltic States, including Lithuania, to bring them to the 'European' level. This brought the issue of dependence on a single supplier to the 'high politics' realm.¹¹ Despite differences in the price of gas supplied by Gazprom to the Baltic States and the existence of transmission infrastructure across borders, there was not a single instance of gas trade between Lithuania and Latvia or Estonia.¹² The change of political power in Lithuania after the national elections in October 2008 coincided with the adoption of a set of EU energy policy instruments. The centre-right politicians that replaced the left-leaning representatives in forming the ruling majority used the specific EU energy policy tools, such as the EU's Third Energy Package of 2009,¹³ and the Security of Supply Regulation of 2010,¹⁴ as they became available, and also made use of the general EU antitrust policy tools.

The main aim of the Third Energy Package was the liberalisation of gas markets for consumers and the rationale for 'ownership unbundling' was a consequence of the findings of the European Commission's (the Commission, the EC) Inquiry into the Energy Sector of 2005-2007 from a competition point of view. The Commission suspected that if the same party owns energy networks

⁶ Pakalkaitė (2012), sec. II.2.3.

⁷ Windhoff-Héritier (2001), p. 259.

⁸ Pakalkaitė (2012), p. 12.

⁹ Arbitration Institute of the Stockholm Chamber of Commerce (2012), p. 9.

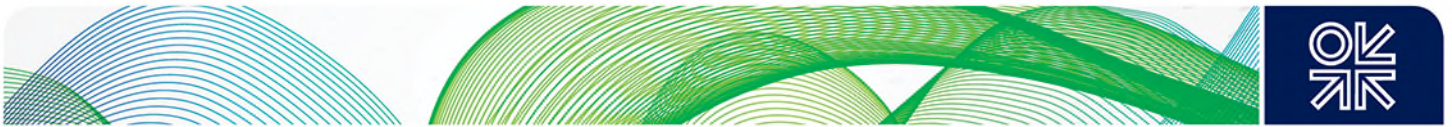
¹⁰ Gazprom and Lithuanian State Property Fund (2004), para. 2.

¹¹ Rokas Masiulis, Interview about the Lithuanian Natural Gas Sector (in Lithuanian), June 3, 2015.

¹² Eurostat, "Comext Database," 2016, <http://epp.eurostat.ec.europa.eu/newxtweb/>.

¹³ European Parliament and Council of the European Union (2009).

¹⁴ European Parliament and Council of the European Union (2010).



and also trades energy, it tends to favour its affiliates and forecloses access to the network to the potential competitors.¹⁵ Thus, in the spirit of the Third Energy Package lies the aim to liberalise consumers and establish a competitive gas market. Nevertheless, Lithuanian political actors mainly used the Third Energy Package for security of supply aims. Exploiting these EU tools, or changes in 'domestic opportunity structures',¹⁶ became possible, because at the critical junctures - such as when the Third Energy Package was negotiated in Brussels in 2007-2008, and had to be transposed to the national level from 2009, or the Security of Supply Regulation was adopted in 2010 - Lithuanian political actors that were inclined towards diversification occupied positions of power in the country.

The paper is structured as follows. First it presents the Third Natural Gas Directive of 2009 and the Security of Supply Regulation of 2010. Then it proceeds by describing the political events in Lithuania before the Third Natural Gas Directive came into force, as these events determined the subsequent developments. Then the paper closely analyses the implementation of the EU regulations, the steps taken by the government and counter steps by the opponents of the reforms of the sector on both domestic and international levels. The paper concludes by presenting the current situation and the future outlook.

2. More than about one EU Member State

Even though, at first sight, the story appears to be about one small EU Member State that consumes less than 3 bcm/year of gas, Lithuania's choice of ownership unbundling, taken from the Third Energy Package in the EU energy policy 'toolkit', became a test case for the European Commission and Gazprom in the application of this Package. As the next section shows, the effects of the Third Energy Package may become more visible when the creation of the EU's internal energy market progresses. When energy companies become competitors even if located in different Member States, the ownership unbundling option of the Third Energy Package may limit their possibilities to control transmission and simultaneously production or supply even in different EU Member States.

2.1 The unbundling models of the Third Natural Gas Directive of 2009

After several years of negotiations, the European Union adopted in 2009 the set of energy legislative measures in the EU electricity and gas sectors, referred to as the Third Energy Package. The EU mainly based this on the previous two energy packages.¹⁷ In both energy sectors, the major changes compared to the Second Energy Package of 2003 were new or strengthened requirements with regards 'to the unbundling of networks, the independence and the powers of national regulators and the functioning of retail markets via enhanced consumer protection measures'.¹⁸ While other major changes gathered less public attention, unbundling provisions caused heated debates over the adoption of the Directive and divided the EU Member States into those in favour and those against ownership unbundling.¹⁹

A part of the Third Energy Package, the Directive 2009/73/EC (hereinafter the Third Natural Gas Directive), allows the Member States to choose from four models concerning how energy transmission companies should be separated from production and/or supply interests: Independent System Operator (ISO), Independent Transmission Operator (ITO), another model which would 'guarantee more effective independence of the transmission system operator' than the ITO (so called

¹⁵ European Commission DG Competition (2007).

¹⁶ Knill and Lehmkuhl (2002), p. 261.

¹⁷ The first attempts to lay down natural gas sector-specific grounds for competition at the EU level was the Directive 98/30/EC Concerning Common Rules for the Internal Market in Natural Gas Market (the First Natural Gas Directive), followed by the Directive 2003/55/EC Concerning Common Rules for the Internal Market in Natural Gas (the Second Natural Gas Directive). The First and Second Natural Gas Directives began the process of transition for consumers to have free choice, first allowing industrial customers the choice of supplier followed by domestic ones.

¹⁸ European Commission (2014), p. 2.

¹⁹ Argus Power Europe, "Members Divided over Unbundling," June 21, 2007, <https://direct.argusmedia.com/newsandanalysis/html/884134?keywords=Members%20divided%20over%20unbundling>.



'ITO plus'²⁰), or Ownership Unbundling (OU). The OU model prohibits the transmission system owner from having control over either gas production or supply.²¹ The other possible models, ISO, ITO and 'ITO plus', still allow a vertically integrated gas company to maintain its ownership of networks, but interests have to be effectively separated by other means. Under the ISO model, a separate independent system operator maintains technical and commercial operation of the transmission system.²² Under the ITO model, a vertically integrated company continues to operate the transmission system but with extremely strict separation requirements. If a gas transmission system was a part of a vertically integrated company in September 2009,²³ a Member State had a right to decide not to apply the OU model but apply instead one of the remaining models, neither of which required divestment. However, if chosen, the OU model had to be in effect by March 2013 at the latest.²⁴

A Member State chooses an unbundling model at the legislative level while transposing the relevant provisions of the Third Natural Gas Directive into the national legislation. After the legislation is in place, transmission system operators are required to request a regulator to certify it under a certain model. The regulators may start the certification procedure on their own initiative or after having received a request from the European Commission.²⁵ Regulators consult with the EC Directorate-General for Energy (DG ENER) during their decision-making process on certification of their transmission system operators. If a Member State opts for full ownership unbundling on its territory, a gas company does not have the right to set up an ISO or an ITO.²⁶

Under the OU model, if chosen, a Member State must ensure that the legal entity cannot control production or supply and – simultaneously – 'exercise control or any right' over a transmission system or its operator. Conversely, control over a transmission system or its operator precludes the owner from 'directly or indirectly exercising control' or any right over a company that is active in production or supply, supply meaning sale and resale of natural gas.²⁷

The Directive does not specifically set out its territorial scope, and in the relevant section defines only the substantial scope, that is the natural gas sector.²⁸ Recital 18 of the Directive states that 'an undertaking performing any of the functions of production or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling'.²⁹ The performance of functions of production or supply can be understood to be anywhere else in the EU, not just within the Member State that has opted for the ownership unbundling model. This interpretation of the relevant provisions of the Directive was confirmed by one interviewee who participated in Lithuania's negotiations with Gazprom and E.ON, and by several independent lawyers.

The EC DG ENER opinions on EU Member decisions with regards to certification of those operators that were established under the ownership unbundling model show that, indeed, the Commission does not limit its analysis of the operator's activities in supply or production only to the one EU Member State, in which the operator had been certified. In their opinions, the EC took a broader overview. Moreover, as seen from those opinions, despite the fact that certification decisions concerned gas transmission system operators, the EC considered the interests of their shareholders in electricity as well. For example, in April 2012, in one of the early certification decisions related to

²⁰ European Parliament and Council of the European Union (2009), Art. 9(9).

²¹ European Parliament and Council of the European Union (2009), Art. 9.

²² European Parliament and Council of the European Union (2009).

²³ A gas company would be considered vertically integrated, if it controlled several functions along the supply chain, for example in transmission and supply, or production and LNG.

²⁴ European Commission (2010).

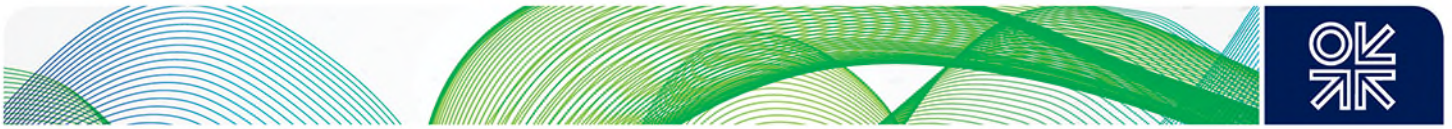
²⁵ European Parliament and Council of the European Union (2009), Art. 10.

²⁶ European Parliament and Council of the European Union (2009), para. 18.

²⁷ European Parliament and Council of the European Union (2009), Art. 9; Note this would include natural gas supplied from domestic production, pipeline imports or LNG.

²⁸ European Parliament and Council of the European Union (2009), Art. 1.

²⁹ European Parliament and Council of the European Union (2009), para. 18.



gas transmission system operators under the ownership model, Swedegas (Sweden), the EC took into account that the owner of the company, EQT Infrastructure Fund, had three affiliated companies active in generation, production or supply, even though one of them was in the neighbouring Member State Denmark and two in the United States.³⁰ The same year, in a certification decision of the UK companies National Grid Electricity Transmission, National Grid Gas and National Grid Interconnectors, the EC took into account that the owner of those companies, National Grid, had other subsidiaries involved in the generation of electricity in the United States. The EC pointed out that the relevant Articles of the Third Energy Package were 'not restricted to generators, producers and suppliers operating in the European Economic Area'.³¹ Similarly, in 2013, in the certification decision of one of the Italian transmission system operators, Società Gasdotti Italia, EC acknowledged that it had power capacities in the UK and Spain.³²

In its concluding decisions, in these specific cases, the EC did not find significant obstacles to the certification of the transmission system operators, mainly because it deemed them to be too geographically separated from each other to create incentives for the owner to discriminate against possible competitors and favour its subsidiaries. Thus, it used the logic similar in competition policy merger and acquisition cases. However, in June 2012 in the decision on the certification of an ownership unbundled Spanish transmission system operator, Enagas, the Commission went further. It concluded that 'a swift action is required to remedy [the] situation' that a member of the board of Enagas was also a member of the board of BP and EON, which are active in EU markets.³³

Even though the EC in its initial certification opinions after the Third Energy Package came into effect generally did not go beyond analysis and acknowledgment of energy supply or production business interests outside of the territory of the operator's Member State, as the integration of the internal EU energy market progresses and country borders between energy markets dissolve, the situation will change. Companies that are active in different Member States become competitors to each other, and the unbundling provisions may apply across several EU Member States and influence investment decisions of energy companies.

2.2 Happy with Liberalisation, but not with Vertical Separation

Gazprom initially had welcomed the EU's attempts to liberalise its gas markets, because the company saw a possibility to increase its dominant position. 'Undoubtedly Gazprom will not only preserve its position in this market but will enhance its dominance as liberalisation continues to occur', - leaders of Gazprom announced in the foreword to an annual report of 2003, in the year when the Second Energy Package replaced the First Energy Package.³⁴ In the same foreword, Gazprom presented a vision of the company as 'a vertically integrated diversified energy company'.³⁵ The unbundling provisions of the Third Natural Gas Directive six years later went against such a vision of Gazprom's business in EU territory.

While multinational energy companies from EU countries, in theory, had the ability to discuss the Third Energy Package with their country representatives, Gazprom comes from a non-EU country and its country's representatives do not have a formal say in negotiating EU regulations in Brussels. Yet, during the discussion and promulgation of the Third Natural Gas Directive, Gazprom had shares in gas supply (mostly) and transmission companies in many EU Member States, especially in those from the former socialist block and Germany. The shares either were directly owned by Gazprom, or by its subsidiaries, such as Gazprom Germania, or by the subsidiaries of subsidiaries. For example,

³⁰ European Commission (2012b), Certification of Swedegas.

³¹ European Commission (2012a), Certification of National Grid Electricity Transmission Plc, National Grid Gas Plc and National Grid Interconnectors Limited.

³² European Commission (2013a), Certification of SGI.

³³ European Commission (2012c), Certification of ENAGAS.

³⁴ The Second Energy Package enabled consumers (industrial consumers from 1 July 2004 and domestic consumers from 1 July 2007) to choose their own gas and electricity suppliers, but did not regulate the transmission network ownership.

³⁵ Gazprom (2004).



Gazprom owned shares in national gas companies in all three Baltic States and Finland, in Slovakia (sale of gas), Netherlands (transportation), Poland (transportation), Germany (transportation and sales) and others.³⁶

When Lithuania in 2009-2010 began to implement the Third Natural Gas Directive, it was one of the earliest attempts to implement the newly adopted Directive via the ownership unbundling model in the EU.³⁷ Russia's President Vladimir Putin called the implementation of the Directive in Lithuania 'uncivilised robbery'. He was quoted as saying: 'Our companies, together with German partners, legally acquired distribution [transmission and supply] assets in Lithuania. Now they are being thrown out of there with reference to the Third Energy Package'.³⁸ In April 2014, Russia referred the Third Energy Package to the WTO 'concerning the production, supply and transmission of natural gas or electricity, the certification requirements in relation to third countries, which Russia argued were discriminatory, and the requirement in respect of granting access to natural gas and electricity network capacity by transmission service operator'.³⁹

As a part of the transposition process, Lithuania entered into negotiations with Gazprom and E.ON, two major shareholders of Lietuvos Dujos, which was the Lithuanian main natural gas company at the time. Soon after the start of the discussions, Lithuania invited the Commission to participate in the implementation and later negotiations. As a Lithuanian lawyer that worked with the case described in an interview, the Commission was very proactive in the 'consultations', because 'the Commission saw that the Lithuania's case was the litmus test. If Lithuania did not succeed to implement the ownership unbundling, it would have been a very strong hit to the whole Third Energy Package and would hinder its viability'.⁴⁰

However, according to another interviewee, E.ON was more important than Gazprom to the negotiators: if Lithuania had acquired the shares of Lietuvos Dujos owned by E.ON, it would have had 56.61% of the company – the controlling package. The former high-level official at the Ministry of Energy said: 'Even though it may sound like a paradox, the main actor of this play, after all, was not Gazprom, but E.ON' – which was also the only one of the two main shareholders coming from an EU country... It was a simple math: if E.ON sold its shares in Lietuvos Dujos, the Lithuanian government would become a majority shareholder, and then we could say "honestly, I do not care." <...> E.ON was an EU-based player, the EC was behind us, and E.ON had many internal problems at the time'.⁴¹

3. Inception of the Reform: The 'Butterfly Effect' after the Government's Failure in 2006

The European Commission proposed the Third Energy Package in September 2007, and the European Parliament and the Council adopted it almost two years later. When the EU discussed the draft Directive, Lithuania was clearly eligible to receive a derogation from its main requirements,

³⁶ Gazprom (2011).

³⁷ Based on the transmission system certification decisions by the European Commission, from the start of the implementation of the Third Natural Gas Directive in the fall of 2011 until February 2016, 22 out of 109 certification decisions were related to the ownership unbundling option in the gas sector: Denmark, the UK, Sweden, Spain, Belgium, Germany, Italy and Spain, but Gazprom had no shares in any of those transmission system operators. In two decisions in Germany, where Gazprom had shares in transmission system operators in 2012, the German regulator certified them under the ITO model: transmission system operator Gascade, which was partially owned by GAZPROM Germania via an intermediary company, as well as Ontras (minority shares held by Gazprom).

³⁸ Ilya Arkhipov, "Putin Says Lithuania's Unbundling Plan for Gazprom's Lietuvos Is 'Robbery'," Newsportal, *Bloomberg*, (November 26, 2010), <http://www.bloomberg.com/news/2010-11-26/putin-says-lithuania-plan-for-lietuvos-unbundling-is-robbery-.html>; Gleb Bryanski, "Putin Says EU Energy Laws Are Uncivilised 'Robbery,'" *Reuters India*, February 10, 2010, <http://in.reuters.com/article/2010/11/26/idINIndia-53174220101126>.

³⁹ Agence Europe, "Russia Refers EU's Third Energy Package to WTO," May 2, 2014.

⁴⁰ Lithuanian lawyer that worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian), tête-à-tête, July 23, 2014.

⁴¹ Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian), Skype, April 7, 2016.



because it could qualify on the criterion of being an isolated natural gas market. First, there were no gas infrastructure connections to the interconnected system of any other Member State,⁴² but only to Latvia, which was also an isolated market. Second, Gazprom supplied 100% of natural gas to the market, which was well above the 75% market share outlined in the Directive.⁴³ Nevertheless, in June 2008, during discussions in Luxemburg, Lithuanian officials expressed the request not be derogated from certain provisions – e.g. unbundling, consumer liberalisation - of the Directive.⁴⁴

Such a step was unusual at the time because all other EU Member States that were eligible for derogation as isolated markets, Estonia, Latvia, Finland, and Cyprus, used this opportunity to postpone liberalisation of their natural gas markets.⁴⁵ This was also unusual compared to the previous history of energy policy in Lithuania. Lithuania had been 100% dependent on Russian gas for half a century in total, and the dependence continued throughout the first two decades of the country's independence from the Soviet regime. Moreover, in 2007-2008, the initial position of Lithuania's Ministry of Economy was to ask for a derogation and a prolonged transposition time. The Ministry of Economy argued that Lithuania had been an isolated energy market and breaking up the companies would negatively affect the financing of strategic energy projects. Moreover, the Ministry claimed that the unbundling option for Lithuania was limited, because of the country's obligations based on the privatisation agreement of Lietuvos Dujos and transit of gas to the Russian enclave of Kaliningrad on the Baltic Sea.⁴⁶

However, an earlier unrelated chain of events led Lithuania to abandon the possibility of derogation. In May 2006, the Social Democrat coalition government failed because of internal clashes, but the next elections were not scheduled until October 2008. The Social Democrats formed a minority government and signed a cooperation agreement with the main opposition party, the Homeland Union – Lithuanian Christian Democrats (the Conservatives). As the press metaphorically commented at that time, the 'opposition stepped into the government' and acquired a right to co-govern Lithuania on crucial issues.⁴⁷

Based on the agreement, the Conservative party leader, Andrius Kubilius, became the chairman of the European Affairs Committee in the Parliament (also called Seimas), which later had a major influence on Lithuania's position towards the draft version of the Third Energy Package launched by the European Commission. By the end of 2007, the Conservatives terminated the cooperation agreement with the Social Democrat minority coalition government, but, despite the disapproval of the Social Democrats, retained the leading positions in some Parliamentary committees, including the European Affairs Committee.⁴⁸ Andrius Kubilius decided to push for full implementation of the Directive. According to him, the turning point was a five-page memo by a Lithuanian energy expert.

Andrius Kubilius said in an interview: 'Following our request, an expert presented a conclusion that it was not worthwhile for Lithuania to ask for a derogation because then the *status quo* would remain. If we asked for a derogation, everything would stay the same: one pipeline, Gazprom, and its monopoly. After an internal discussion, the Committee stated that Lithuania should not ask for a derogation'. He explained the underlying logic being similar to the movement towards the country's independence back in the 1980s: 'First let's act and go forward. Once we are there, we will somehow figure it out. The only thing we were sure of was that the situation would not remain as usual, but it was obscure

⁴² The Lithuanian natural gas transmission system was directly connected to Belarus which is not a Member State of the EU and to Latvia, which was not an interconnected market itself.

⁴³ IEA Natural Gas Information Statistics (2015).

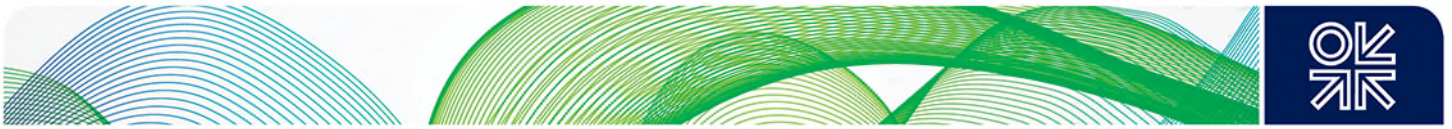
⁴⁴ Committee on European Affairs (2008a).

⁴⁵ European Parliament and Council of the European Union (2009), Art. 49.

⁴⁶ Ignatas (2007).

⁴⁷ Denisas Nikitenka, "The future government - a hostage in blackmailing/Lipdoma Vyriausybė - šantažo įkaitė," *Vakarų ekspresas*, July 4, 2006, <http://www.ve.lt/naujienos/lietuva/lietuvos-naujienos/lipdoma-vyriausybe---santazo-ikaite-401370/>.

⁴⁸ Knill and Lehmkuhl (2002), 258.



how it would evolve'.⁴⁹ The determination of Andrius Kubilius was fuelled by his broader political beliefs that Lithuania's energy dependence on Russia was a geopolitical threat.⁵⁰

After half a year of discussions between the Government and the European Affairs Committee, the Committee used a possibility provided in the Statute of the Parliament and, one day before the Council of the EU (Transport, Telecommunications and Energy) meeting in Luxemburg in June 2008, overruled the Government's resistance.⁵¹ As a consequence, on the next day in Luxemburg, unlike Estonia, Latvia and Finland, Lithuania opted out from the derogation option in Article 49 of the Directive and had to transpose the Directive in a timely manner and in full. Nevertheless, the European Affairs Committee had a more flexible opinion than the future Government of 2008-2012 and indicated in its decision that for the first five years Lithuania would choose the ITO solution having in mind the final aim to implement the OU model.⁵²

Even though this episode may not have been significant in causing any immediate changes in the Lithuanian gas market during the following three years, and no major changes took place in the gas sector in Lithuania, the tools to reform the market were set up. It could be called 'the butterfly effect':⁵³ Following these minor events in 2007-2008, Lithuania embarked on gas market reform in 2010-2012, when the time came to transpose the Directive. What we can observe here is a short-term redistribution of power across opposing 'actor coalitions'.⁵⁴ The Social Democrat government at the time sought a derogation from the Directive. However, they allowed the Conservatives to gain powerful committee positions, and the Conservatives used this opportunity change the course of the Lithuania's dependence on a single natural gas supplier.

4. Turnaround in Lithuanian Energy Policies after the 2008 Election

After the general election of October 2008, Lithuania's approach towards the structure of its natural gas market changed. This was because the election changed the composition of the government from centre-left to centre-right, when the Conservatives led by Andrius Kubilius were victorious in the election. From opposition Andrius Kubilius stepped into power and could implement his agenda in the energy sector. However, the Social Democrat government in the transition period after the election attempted to include Achema in the LNG terminal business.

After the election, the political groups of the Homeland Union – Lithuanian Christian Democrats (Conservatives led by Andrius Kubilius), National Revival Party, Liberal Movement, and Liberal and Centre Union formed the centre-right ruling coalition. Those parties that formed the earlier ruling majority of 2004-2008, the Lithuanian Social Democrats, Labour Party (in Government before summer 2006), and Order and Justice Political Groups, remained in the opposition.⁵⁵ Andrius Kubilius became the Prime Minister, formed a government and in 2009 restored the Energy Ministry, which had been abolished in 1997.⁵⁶

⁴⁹ The former prime minister actually used a phrase in Russian "вперед, а там разберемся", from the book *Alice: The Girl From Earth* by the Russian author Kir Bulychev.

⁵⁰ Kubilius (2007); also Andrius Kubilius, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian), June 8, 2015.

⁵¹ Committee on European Affairs (2008a, 2008b).

⁵² Committee on European Affairs (2008a).

⁵³ The "butterfly effect" is a term attributed to an American professor of meteorology Edward N. Lorenz in 1960s-1970s and means that that small initial changes can have large effects later on.

⁵⁴ Knill and Lehmkuhl (2002), p. 261. The terms 'interest constellation' or 'actor coalition' are purely theoretical, based on the position of actors with regards to certain aspects of the natural gas sector reform, which does not necessarily mean that the actors align their positions with each other.

⁵⁵ Seimas of the Republic of Lithuania, "Parliament of 2008-2012/X Seimas (2008–2012)," 2012, http://www3.lrs.lt/pls/inter/w5_show?p_r=6111&p_k=1.

⁵⁶ Ministry of Energy of the Republic of Lithuania, "About the Ministry: History," November 10, 2015, <http://enmin.lrv.lt/en/about-the-ministry/history>.



Before the end of their term in power, the Social Democrats attempted to start their own LNG terminal project, which would be built in cooperation with Achema, and put the project on the agenda of the future government in case they lost the election. Less than a month before the general election of October 2008, the Social-Democrat coalition government appointed the Ministry of Economy to create a company to build an LNG terminal together with Achema, which was the main fertiliser producer and the single largest consumer of gas in Lithuania.⁵⁷ On the day after losing the election to the Conservatives, the Social-Democrat coalition Government represented by the Ministry of Economy established Gamtinių Dujų Terminalas with Achema.⁵⁸ While the Conservatives were building a ruling coalition to create the new government, the temporary Social Democrat Prime Minister Gediminas Kirkilas rushed to increase the capital of Gamtinių Dujų Terminalas by injecting the government-owned 17.7% of Lietuvos Dujos by mid-December 2008 – essentially by the time the new government formation had to be finalised.⁵⁹ However, in mid-November the Special Investigation Service (STT) launched a pre-trial investigation on alleged violations related to the establishment of Gamtinių Dujų Terminalas,⁶⁰ and the temporary Social-Democrat government did not inject the shares of Lietuvos Dujos. The centre-right Government liquidated Gamtinių Dujų Terminalas in 2009.

Arvydas Sekmokas, a minister of the newly created Energy Ministry at the time, said initially that the gas and LNG questions were nowhere near the top of policymakers' minds. The important questions were related to the controversial LEO LT private-public nuclear project company created by the previous Government, the closure of the old RBMK type Ignalina nuclear power plant at the end of 2009, electricity prices after the closure, and a new nuclear power plant project. The dismantling of LEO LT set an appetite for a more challenging project.

The centre-right government focused on the organisation of the Lithuanian gas markets step-by-step, and it gained momentum by mid-2010. First, in May 2009, before the Third Energy Package was enacted in Brussels, the Lithuanian Parliament voted on a decision to request the Lithuanian Constitutional Court to analyse the privatisation agreements of Lietuvos Dujos against the Constitution.⁶¹ By the end of 2009, it further focused on the organisation of the natural gas market and on ensuring alternative gas supplies. To create alternative supplies, an LNG terminal was a necessity, and the future terminal (at Klaipėda) had to be fully connected to the Lithuanian gas transmission system. Disagreements arose between the Government and the transmission system owner, Lietuvos Dujos, about finalising the gas transmission grid and connecting Klaipėda on the seacoast to Jurbarkas in south-west Lithuania.⁶² Arvydas Sekmokas explained why the government subsequently proposed the OU model, and not the ITO or ISO models: 'Firstly a whole discussion about the transmission pipeline from Jurbarkas to Klaipėda took place. When it became evident that Lietuvos Dujos absolutely resisted this project, even though it was in the earlier strategic plans of the company, it appeared that it was using its monopolistic position and did not allow for an alternative

⁵⁷ Government of the Republic of Lithuania (2008).

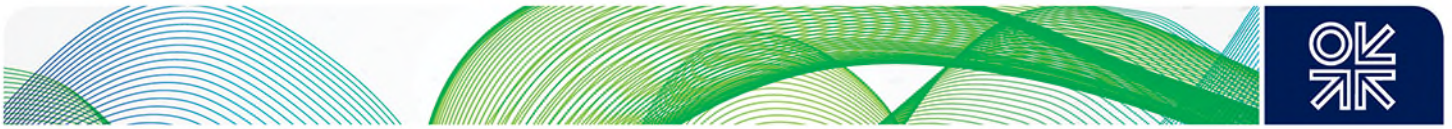
⁵⁸ VĮ Registrų centras, "Juridinis Asmuo: UAB 'Gamtinių Dujų Terminalas', Kodas 302043537," accessed May 3, 2016, <http://www.registrucentras.lt/jar/p/dok.php?kod=302043537>.

⁵⁹ TV3, "G.Kirkilas: Shares of Lietuvos Dujos May Be Transferred by the Mid-December/G.Kirkilas: „Lietuvos Dujų“ Akcijos Gali Būti Perduotos Iki Gruodžio Vidurio (in Lithuanian Only)," *tv3.lt*, November 11, 2008, http://www.tv3.lt/naujiena/223113/g-kirkilas-lietuvos-duju-akcijos-gali-buti-perduotos-iki-gruodzio-vidurio?utm_source=facebook.com&utm_medium=recommend&utm_campaign=naujiena; BNS and Rasa Lukaitytė, "G.Kirkilas: The Government Will Attempt to Transfer the Shares of Lietuvos Dujos As Soon As Possible/G.Kirkilas: Vyriausybė Sieks Perduoti „Lietuvos Dujų“ Akcijas Kuo Greičiau (in Lithuanian Only)," *DELFI*, November 2008, <http://www.delfi.lt/verslas/energetika/gkirkilas-vyriausybė-sieks-perduoti-lietuvos-duju-akcijas-kuo-greiciau.d?id=19224016>.

⁶⁰ Petras Vaida, "Kirkilas Receives News about Launched Investigation on Establishment of Gamtinių Dujų Terminalas Calmly," *The Baltic Course | Baltic States News & Analytics*, November 20, 2008, http://www.baltic-course.com/eng/legislation/?doc=7231&ins_print.

⁶¹ Seimas of the Republic of Lithuania (2009).

⁶² Eglė Samoškaite, "A.Sekmokas: Lietuvos Dujos Invest Only in Those Projects That Are Useful to Gazprom/A.Sekmokas: „Lietuvos Dujos“ Investuoja | Tuos Projektus, Kurie Naudingi „Gazpromui“," *DELFI*, September 28, 2010, <http://www.delfi.lt/verslas/energetika/asekmokas-lietuvos-dujos-investuoja-i-tuos-projektus-kurie-naudingi-gazpromui.d?id=36986989>.



supplier to come. Then the only opportunity that remained for us was to implement the Third Energy Package via the ownership unbundling option'.⁶³

The Lithuanian government wanted to take control of the transmission system, because it deemed that the 'ring' created by the connection between Klaipėda and Jurbarkas was necessary for the functioning of the LNG terminal.⁶⁴ Arvydas Sekmokas explained in an interview: 'I got a wish: if we could dismantle LEO LT, why should we not try to hunt a larger animal down? When we decided to implement the Third Energy Package by opting for an ownership unbundling model, the Prime Minister was shaking his head: Gazprom's annual budgets were larger than Lithuania's annual budgets. Yet he gave us a green light – at the end it was our ministry that had to do the hard part of the job'.⁶⁵

In parallel, in July 2009, the EU finalised the adoption of the Third Energy Package and, after the Ukrainian gas crisis of January 2009, the European Commission proposed the Regulation Concerning Measures to Safeguard Security of Gas Supply (hereinafter Security of Supply Regulation) in July 2009.⁶⁶ This Regulation, adopted by the European Parliament and the Council in October 2010, required EU Member States to ensure that an infrastructure standard referred to as 'N – 1' was met by 3 December 2014 at the latest. The standard required that in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure, is able to satisfy total gas demand 'during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years'.⁶⁷

A former high-level official from Lithuania said: 'For Lithuania, a very convenient path was laid down, and it was possible to make use of it. However, no reforms would have happened without the political will. The EU legislations coincided with a good combination of the Government, the strong institution of the President and possibly a weaker Parliament'.⁶⁸ The Lithuanians decided that a new LNG terminal would be required to fulfil the 'N – 1' requirement. The current minister of energy, Rokas Masiulis, explained in an interview: 'The EU demanded us to fulfil the "N – 1" requirement, thus, to have an alternative supply. We had to implement by December 2014. Thus, we chose the same date, 03 December 2014, a gas terminal to be operational, so we fulfil the regulations. But the real motive, of course, was, that Lithuanians had decided that instead of simply waiting, they had to do something'.⁶⁹

The contents of the concept of the future Law on Natural Gas, approved by the centre-right Government in May 2010, indicates that the government had made a political decision to move on with the reform and consolidate the EU legal instruments available at the time for the implementation, even those for which there was no immediate need. The concept of the future Law on Natural Gas was aimed to ensure the implementation of both the Third Natural Gas Directive of 2009 by choosing the ownership unbundling option and the 2004 Council Directive of Security of Supply. The transposition deadline for the Directive of the Security of Supply of 2004 had expired four years prior, in May 2006.⁷⁰ The previous Government of 2004–2008 had adopted a set of rules transposing it in February 2008.⁷¹ The 2010 concept also referred to the at the time future Security of Supply Regulation, which the EU adopted five months later.⁷² This evidence that the Government of 2008–

⁶³ Arvydas Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian), tête-à-tête, July 22, 2014.

⁶⁴ Sekmokas, also Kubilius, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

⁶⁵ Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

⁶⁶ European Commission (2009).

⁶⁷ European Parliament and Council of the European Union (2010), Art. 6.

⁶⁸ Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian).

⁶⁹ Masiulis, Interview about the Lithuanian Natural Gas Sector (in Lithuanian).

⁷⁰ European Council (2004).

⁷¹ Government of the Republic of Lithuania (2008).

⁷² Government of the Republic of Lithuania (2010).



2012 had also been aware of the draft regulation discussed in Brussels, which, unlike directives, was applied directly and binding in its entirety,⁷³ shows even more that there was no immediate need to transpose the earlier (2004) Directive of Security of Supply.

Andrius Kubilius said in an interview: 'Our membership in the EU since May 2004 was very beneficial to us, because we had a chance to participate in the creation of the European instruments which we later could use individually against Gazprom, but this time as a *European* instrument.'⁷⁴ A former advisor of Andrius Kubilius added: 'All of these [legislations] were related. Since we did not ask for derogation [in the Security of Supply Regulation of 2010], we had to have alternative supplies at the end of 2014. But for the terminal to be operational, we had to implement the Third Natural Gas Directive fully, so Gazprom would not create obstacles for [alternative] supplies'.⁷⁵ Another politician, an energy minister 2014-2016, said, 'If you are eager to fight, you will find a stick to use'. He added with regards the availability of the EU instruments when they were needed that it was the 'luck of the draw'.⁷⁶

According to Arvydas Sekmokas, the key domestic moment for the fate of the unbundling and LNG terminal was an invitation to present the ownership unbundling plan to the President, Dalia Grybauskaitė, when the plans reached the public discussion level. The minister and his lawyers had made extensive preparations for the presentation in front of the President because he understood that it would be a 'cornerstone decision-making point how to implement the Third Energy Package'.⁷⁷ After the successful meeting with the President, the Government acquired a powerful domestic actor supporting the reform and in this way expanded their pro-liberalisation oriented 'interest constellation'⁷⁸ or 'interest structure'.⁷⁹

5. The Chess Game: Implementation of the EU Legislation

The Government of 2008-2012 embarked on two simultaneous and interdependent projects in the natural gas market – implementation of ownership unbundling and building a new LNG terminal in a port adjacent to Klaipėda city on the Baltic Sea. It used the unbundling provisions of the Third Energy Package to make sure that Lietuvos Dujos created the missing pipeline link between the coast of Lithuania and the main gas transmission system (Klaipėda-Jurbarkas). It also set the deadline of December 03, 2014, to ensure the 'N-1' security of supply criterion envisaged in the Security of Supply Regulation, and EU-level competition policy tools as soon as it collected data for the claim against Gazprom.

The natural gas market reform took off in different political arenas, both domestic and international, and had different flash points. The first battleground involved questions of the ownership unbundling process, coded in the Law on Natural Gas and related projects. It was more contested on the domestic level mainly in the Parliament and in public media announcements by the shareholders of Lietuvos Dujos, and sometimes in Brussels in negotiations with shareholders of Lietuvos Dujos.

The second battleground was related to the LNG terminal in Lithuania. It was less openly contested on the domestic level. As one interviewee related, this project, 'out of all the energy projects implemented in Lithuania during many years, was the only one that was being built rather

⁷³ Grohs (2012), p. 58.

⁷⁴ Kubilius, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

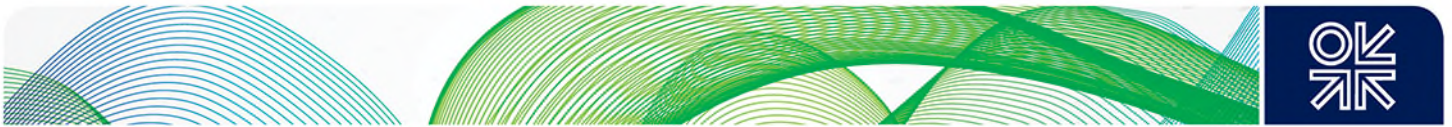
⁷⁵ Kęstutis Škiudas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian), tête-à-tête, June 8, 2015.

⁷⁶ Masiulis, Interview about the Lithuanian Natural Gas Sector (in Lithuanian).

⁷⁷ Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

⁷⁸ Knill and Lehmkuhl (2002), p. 261.

⁷⁹ Schneider (2001), pp. 74–75: interest structure is defined as 'interest positions of the major political actors for or against institutional changes, weighted with their power resources'.



collectively',⁸⁰ meaning, it was built regardless of the political differences between the local politicians. This was confirmed in an interview with a member of the ruling coalition of 2012-2016 (at the time of the above events, the opposition), who said that 'we had to diversify – of course we could do it together with Latvians or with the Poles'.⁸¹ However, the opponents, both domestic and international business interests, actively challenged the LNG project at the Brussels level. The next sections firstly analyse the power struggles on the national level, and then go to the international level.

5.1 Promulgation of the Laws: Visible and Invisible Fights

After the centre-right coalition Government adopted the concept of the future Law on Natural Gas in May 2010, it started preparing the relevant draft Law on Natural Gas and the Law on Implementation of the Law on Natural Gas.⁸² The resistance against the reforms started consolidating. What made it harder for the centre-right Government, is that in March 2010, almost a year before the submission of the draft laws that transposed the Third Natural Gas Directive in February 2011,⁸³ it had lost its majority in Parliament by only a few parliamentarians. As a consequence, the adoption of such complex laws relied much on the opinion of the opposition.

There were discussions and expressions of resistance in the public domain, such as in the Parliament sessions or statements by the shareholders of Lietuvos Dujos. However, much of the resistance was not visible to an outsider or not directly relatable to the choice of an ownership unbundling model, such as an attempt to remove the energy minister, Arvydas Sekmokas. The Parliamentary opposition consolidated to call for the removal Arvydas Sekmokas by December 2010, to which they submitted 25 questions about the whole Lithuanian energy sector. The initiator of the procedure, the Order and Justice Political Group, collected 70 signatures, which meant that half of the Parliament members, mainly the whole opposition, signed to start the procedure.⁸⁴ However, in March 2011, they failed to collect the necessary amount of votes to remove the minister.⁸⁵

In addition to the resistance coming from the Parliamentary opposition, the shareholders of Lietuvos Dujos, E.ON Ruhrgas, and Gazprom, called the choice of the ownership unbundling model 'the most interfering option envisaged under the Directive 2009/73/EC'⁸⁶ and tried to influence the transposition of the Directive. Firstly, they attempted to persuade the parties concerned, such as the Lithuanian Parliament and the general public that Lithuania, like Latvia, Estonia or Finland, could derogate from the Third Natural Gas Directive.⁸⁷ Secondly, if Lithuania was to implement the Third Energy Package, Lithuania should choose any other option but not that of ownership unbundling.⁸⁸ In an open letter to the Lithuanian Government in September 2010, E.ON and Gazprom warned that 'an overhasty implementation of OU which deeply affects all processes and structures of Lietuvos Dujos through fully separating the transmission business from the rest of the company could cause disruptions of gas supply'.⁸⁹

⁸⁰ Former high-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian).

⁸¹ A member of the Ruling Coalition of 2012-2016, Interview about the Lithuanian Natural Gas Sector (in Lithuanian), tête-à-tête, February 10, 2015.

⁸² Committee on Economics (2011).

⁸³ Government of the Republic of Lithuania (2011a).

⁸⁴ Order and Justice Political Group, "An Announcement by the Order and Justice Political Group: The Group Already Collected the Necessary Amount to Start the Interpellation Procedure of A.Sekmokas/Seimo Frakcijos „Tvarka Ir Teisingumas“ Pareiškimas: „Tvarkiečiai“ Jau Surinko Reikiamą Kiekį Parašų Interpelacijai Energetikos Ministrui A.Sekmokui Pradėti," December 7, 2010, http://www.lrs.lt/sip/portal.show?p_r=15371&p_k=1&p_t=104419.

⁸⁵ Seimas of the Republic of Lithuania, "After the Disagreement on Removing A.Sekmokas, he will Continue to be a Minister/Nepritarus interpelacijai, A. Sekmokas toliau eis energetikos ministro pareigas," March 10, 2011, http://www3.lrs.lt/pls/inter/w5_show?p_r=4445&p_d=108374&p_k=1.

⁸⁶ Golubev and Frankenberg (2010), p. 1.

⁸⁷ Frankenberg (2011); Salans (2011); Golubev and Frankenberg (2010).

⁸⁸ Lithuanian lawyer that worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

⁸⁹ Golubev and Frankenberg (2010), para. 8.



Throughout the whole process from initial discussions about derogation in 2007, until the Parliamentary elections of October 2012, the Social Democrats could be attributed to the same ‘actor coalition’ with Lietuvos Dujos with regards to the ownership unbundling. They explicitly supported the interests of Lietuvos Dujos in their public communication,⁹⁰ attempted to postpone the adoption of the relevant laws, and, including the future Prime Minister 2012-2016, Algirdas Butkevičius,⁹¹ consistently voted against those laws. However, even though officially belonging to the opposition in 2008-2012, some members of the Labour Party and Order and Justice Political Groups at crucial moments voted in favour of the Government’s proposals in the Parliament. Members of those two political groups voted in favour in May 2009 to request the Constitutional Court to analyse the conformity of the privatisation agreement with the Constitution,⁹² in June 2011 to adopt the Law on Natural Gas and the Law on Implementation of the Law on Natural Gas, which transposed the Third Energy Package and the choice of ownership unbundling,⁹³ and, in June 2012 in favour of the Law on LNG.⁹⁴ One member of the Labour party explained in an interview that voting in favour of the government’s proposals was merely ‘a finalisation of the whole process’. A politician explained: ‘The fights with Gazprom had taken place, draft laws had been prepared and even the LNG boat had already been ordered at the time. It did not make sense anymore to jump in front of the running train trying to stop it. Naturally, the only way left was to implement everything till the very end’.⁹⁵

The voting and transcripts of discussions of laws are publicly available, however, ‘the biggest battles took place in the Committee of Economics [led by a member of the ruling coalition from the United Group of the Liberal and Centre Union and National Revival Party, Dainius Budrys] that was absolutely invisible’.⁹⁶ According to an interviewed former advisor to the Prime Minister Andrius Kubilius, during the regular sessions of the Parliament the situation was more benevolent towards the ruling coalition, but it did not have a majority in the Committee of Economics. This Committee, however, was the main committee designated to discuss the relevant natural gas legislation and to insert changes in between the discussions of the whole Parliament. However, the discussions of the draft laws in the Committee were often postponed,⁹⁷ even though the parliamentary session was coming to an end. The leader of this Committee publicly expressed his negative opinion about the laws, even though he formally belonged to the ruling coalition.⁹⁸ Thus, while a member of the ruling coalition could undermine the government that embarked on reforming the natural gas sector, members of the formal opposition would play along with the government during the voting. In this

⁹⁰ Lithuanian Social Democratic Party Political Group, “An Announcement of Lithuanian Social Democratic Party Political Group: Important Questions about the Energy Sector Remain unanswered/Seimo Lietuvos Socialdemokratų Partijos Frakcijos Pranešimas: Svarbūs Energetikos Srities Klausimų Atsakymai Vyniojami Į Vatą,” September 28, 2010, http://www3.lrs.lt/pls/inter/w5_show?p_r=618&p_d=102569&p_k=1.

⁹¹ Seimas of the Republic of Lithuania, “Transcript of the Discussions of the Parliament’s Morning Session No 347/Seimo Rytinio Plenarinio Posėdžio Nr. 347 Stenograma,” June 30, 2011, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=403052.

⁹² Seimas of the Republic of Lithuania, “Voting Results, Evening Session 2009-05-05/Balsavimo Rezultatai (2009-05-05, Vakarinis Posėdis),” May 5, 2009, http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-5132&p_var=2.

⁹³ Seimas of the Republic of Lithuania, “Voting Results, Morning Session 2011-06-30/Balsavimo Rezultatai (2011-06-30, Rytinis Posėdis),” June 30, 2011, http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-11842&p_var=2.

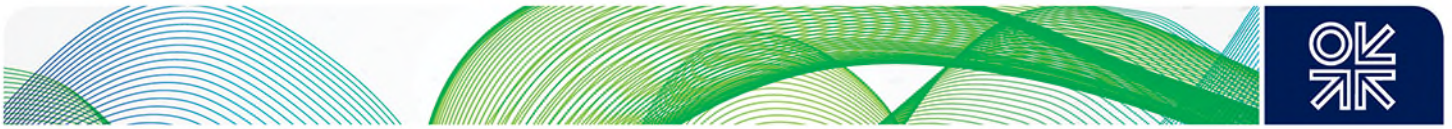
⁹⁴ Seimas of the Republic of Lithuania, “Voting Results, Morning Session 2012-06-12/Balsavimo Rezultatai (2012-06-12, Rytinis Posėdis),” June 12, 2012, http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-14033&p_var=2.

⁹⁵ Interview with a Member of the Labour Party Political Group, Reforms in the Lithuanian Gas Sector (in Lithuanian), tête-à-tête, June 9, 2015.

⁹⁶ Škiudas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

⁹⁷ Committee on Economics, “About the Session of the Committee on Economics on 15 June 2011/Apie Ekonomikos komiteto 2011-06-15 popietinį posėdį,” June 15, 2011, http://www3.lrs.lt/pls/inter/w5_show?p_r=6177&p_d=113108&p_k=1; Committee on Economics, “About the Session of the Committee on Economics on 20 June 2011/Apie Ekonomikos komiteto 2011-06-20 posėdį,” June 20, 2011, http://www3.lrs.lt/pls/inter/w5_show?p_r=6177&p_d=113599&p_k=1; Škiudas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

⁹⁸ Tomas Čyvas, “D. Budrys: Bus Reikalaujama, Kad Ministras A. Sekmokas Atsistatydintų,” *tv3.lt*, June 29, 2011, http://www.tv3.lt/naujiena/544579/d-budrys-bus-reikalaujama-kad-ministras-a-sekmokas-atsistatydintu?utm_source=facebook.com&utm_medium=recommend&utm_campaign=naujiena.



period, the members of the President's Office also signalled the importance of the laws to the President's Institution by participating in the meetings of the Committee of Economics.⁹⁹

Pressure surrounded the promulgation of the laws until the final days of the adoption: less than two weeks before the final voting, E.ON's Senior Vice President Peter Frankenberg sent an email to the members of the Committee of Economics with a legal analysis that Lithuania should ask for a derogation and proposed a meeting with the members.¹⁰⁰ Simultaneously, a legal assessment of the draft laws by an international law firm Salans located in Brussels was distributed to members of the Committee of Economics 'for and on behalf of Gazprom'.¹⁰¹ In Gazprom's name, Salans required to 'suspend the accelerated procedure for adoption', or, in the opposite case, warned that the unbundling option 'could give rise to litigation in national courts, eventually leading to litigation before the European Court'.¹⁰²

Despite these struggles, on the last day of Parliament's summer session, in June 2011, it adopted the Law of Natural Gas and the Law on Implementation of the Law on Natural Gas. The laws envisaged the separation of different operations of Lietuvos Dujos into several companies by operating segment by October 31, 2014. The Social Democrat Political Group was the only one that unanimously voted against, and other political groups either unanimously voted for or had divisions.¹⁰³ By spring of 2012, the year of the next elections, the head of the Committee of Economics, Dainius Budrys joined the Lithuanian Social Democratic Party Political Group.¹⁰⁴ In other words, he officially switched sides to another 'actor coalition', which his behaviour had indicated earlier.

Unlike with the laws on Natural Gas, the adoption process of the Law on LNG terminal was short. This time, nearly all members of Parliament that participated in the session voted in favour of the law, including the Social Democrat Group.¹⁰⁵ The Government proposed the Law on LNG terminal in May 2012, and the adoption took a couple days more than a month from then. Within the text of the Law, the government obliged itself to ensure proper legal, technical and organisational conditions that the LNG terminal would start working 'not later than 03 December 2014, as envisaged in the EU Security of Supply Regulation of 2010'.¹⁰⁶ Thus, once again Lithuanian energy legislation embedded the need to implement an EU energy regulation.

These different laws had different approaches towards the powers of the Lithuanian energy regulator (National Commission for Energy Control and Prices, NCC). The Law on Natural gas of 2011 enabled the NCC to fine a natural gas transmission system operator up to 10% of its revenues from transmission if it did not fulfil the requirements of ownership unbundling by a certain date, and to limit some of its rights until it was unbundled properly.¹⁰⁷ Thus, the NCC received rights to independently enforce the ownership unbundling. On the other hand, based on the Law on Natural gas of 2012, Klaipėdos Nafta, which was appointed to be the project implementation company, and its planned investments in the LNG terminal initially were not a subject of regulation by the NCC.¹⁰⁸ The NCC only

⁹⁹ Former Vice-Minister of Energy, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian), Skype, July 24, 2014.

¹⁰⁰ Frankenberg (2011).

¹⁰¹ Salans (2011).

¹⁰² Salans (2011), paras. 32, 37.

¹⁰³ Seimas of the Republic of Lithuania, "Voting Results, Morning Session 2011-06-30/Balsavimo Rezultatai (2011-06-30, Rytinis Posėdis)," June 30, 2011, http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-11842&p_var=2.

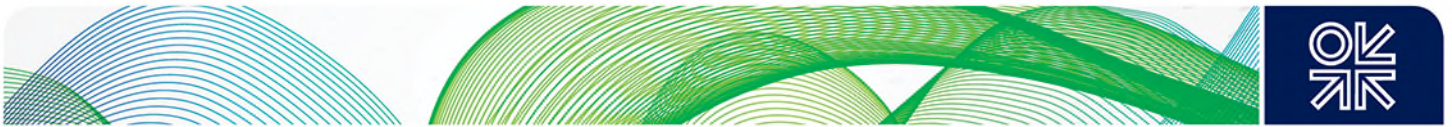
¹⁰⁴ Lithuanian Social Democratic Party Political Group, "News of the Social Democratic Political Group: Dainius Budrys says 'I Am Not Fighting Somebody's Else's Battles'/Frakcijos Naujienos: Dainius Budrys „Nekariauju Svetimų Karų" (in Lithuanian Only)," April 12, 2012, http://www3.lrs.lt/docs3/kad6/w6_istorija.show6-p_r=6258&p_d=123280&p_k=1.html.

¹⁰⁵ Seimas of the Republic of Lithuania, "Voting Results, Morning Session 2012-06-12/Balsavimo Rezultatai (2012-06-12, Rytinis Posėdis)."

¹⁰⁶ Seimas of the Republic of Lithuania (2012), Art. 14.

¹⁰⁷ Seimas of the Republic of Lithuania (2011a), Art. 28.

¹⁰⁸ A Member of the Lithuanian Energy Regulator from 2010, Interview about energy sector regulation in Lithuania (in Lithuanian), tête-à-tête, July 22, 2014; More about the role of the Lithuanian National Commission for Energy Control and



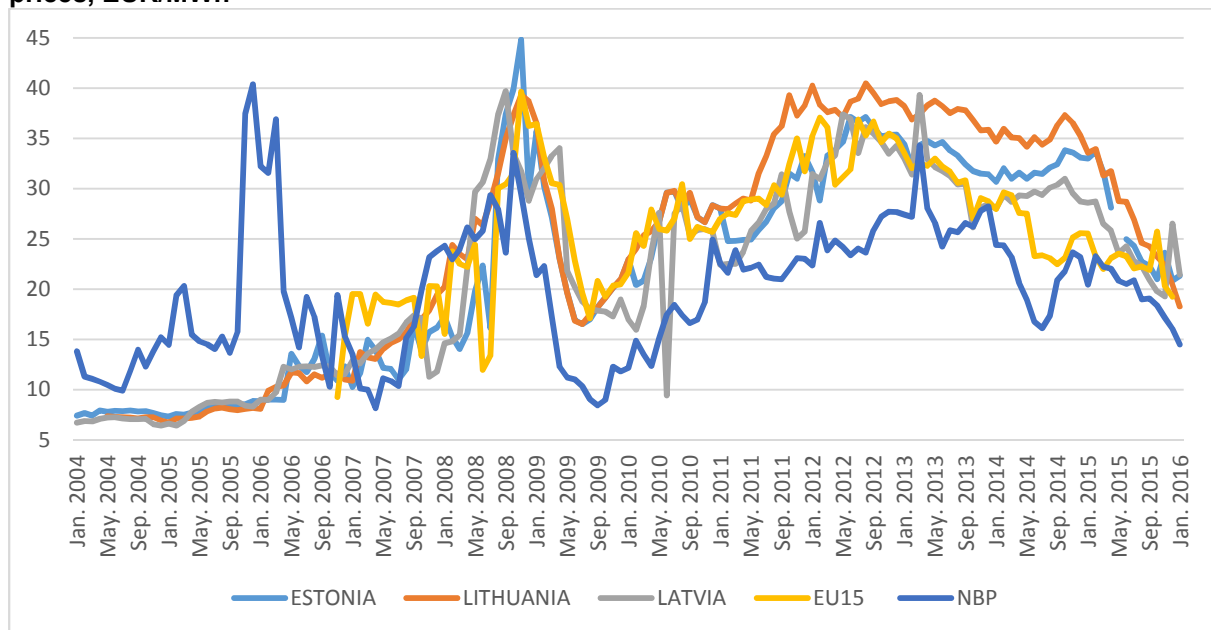
confirmed the Klaipėdos Nafta investment in the LNG terminal in October 2014 – when the FSRU Independence was about to arrive at Klaipėda.¹⁰⁹

5.2 Rising Gas Prices in the Midst of the Transposition of the Directive

Rising Russian gas import prices in the context of closing the Ignalina nuclear power plant was the issue that brought the focus of the Lithuanians onto the organisation of the gas sector. However, the start of the reform was marked by even further increases in gas prices, which coincided with the country’s slow recovery from the biggest economic crisis in Lithuania in this decade that had hit in 2009.¹¹⁰

Russian gas import prices to all three Baltic States had risen since 2005. Then, a year after these countries joined the EU, Gazprom began changing prices ‘in order to bring them to pricing levels equivalent to those charged in Europe by 2007’.¹¹¹

Figure 2: Russian gas import prices estimates and Great Britain’s natural gas exchange (NBP) prices, EUR/MWh¹¹²



As seen in Figure 2 above, even though for the first two years after 2005 estimated Russian gas import prices to the Baltic States were rising, the EU-15 price estimates that were chosen as a ‘European’ price benchmark are too volatile to be comparable. However, from the end of 2008 until March 2014 the EU-15 import price estimates fluctuate at similar levels to the prices for the Baltic States, especially Latvia. This shows that arguably Gazprom delivered its promise to bring the Baltic gas prices to the level of the ‘European’ prices.

Prices will be in the PhD thesis: Vija Pakalkaitė, “Catalysts for Reforms in the EU Natural Gas Markets: Cases of Hungary, Lithuania and Romania” (Doctoral thesis, Central European University, forthcoming in 2017).

¹⁰⁹ National Commission for Energy Control and Prices (2014).

¹¹⁰ In 2009, the real gross domestic product in Lithuania decreased by 15%, compared to 2008.

¹¹¹ Gazprom (2007), p. 11.

¹¹² Source: Own estimates based on external trade statistics reported by Eurostat (COMEXT, the price estimates of imported Russian gas), and NBP spot (day ahead) average price for a month. In COMEXT, Russian gas price estimates of the EU Member States before the enlargement of 2004 (EU-15) countries were chosen as a comparative benchmark of the ‘European’ prices. To estimate the import price, value of imported gas, which Eurostat provides after consolidating data from statistical copies of the customs declarations, was divided by the quantity of imported gas. The quantities of gas imported to EU-15 from Russia are available only starting from November 2006.



What is more important, as is visible in Figure 2, from December 2010-January 2011, is that the estimated Gazprom price for gas exported to Lithuania departed from the gas prices for Estonia and Latvia, and remained constantly higher for another four years. Based on the import price estimates, in 2011, on average Lithuania paid 20% more for Russian gas imports than Latvia and 15% than Estonia. The average gas imports price estimate for Lithuania for 2011 was 31% higher than Great Britain's natural gas exchange (NBP) spot (day ahead) average price.¹¹³

The estimated import price differences coincide with public information that surfaced by the end of 2010 when the Lithuanian government of 2008-2012 was actively preparing to submit the draft Law on Natural Gas to the Parliament. It was publicly announced in the media that Gazprom had agreed to give 15% discounts to Estonia and Latvia, but not Lithuania for 2011.¹¹⁴ At that time, it was clear that Lithuania was the only Baltic State which was going, firstly, to transpose the EU Third Natural Gas Directive, and, secondly, that it was leaning towards ownership unbundling. Latvia and Estonia, on the other hand, were derogated from the Directive. This meant that they did not have to implement certain aspects of the Third Natural Gas Directive, but the derogation did not preclude them from choosing to do so. Thus, at the end of December 2010, at the meeting between Chairman of the Gazprom's Management Committee Alexey Miller and Latvian Economy Minister at the time Artis Kampars, 'the negotiating parties paid special attention to the EU gas market liberalisation and were unanimous in their opinion that the Third Energy Package should be implemented with due regard to the interests of both natural gas exporters and consumers'.¹¹⁵ This was soon followed by a price discount.¹¹⁶

In the same month, the Vice-President of Gazprom, Valery Golubev, publicly related Gazprom's pricing level differences among the Baltic states to the implementation of the EU Directive in the Baltic States.¹¹⁷ The quote of Valery Golubev, as reported by media was 'there is no reason to reduce prices in Lithuania'¹¹⁸ and (translated from Russian) 'We do not understand why Lithuania offers implementation of the Third EU Energy Package in this way, as Lithuania, Latvia and Estonia are isolated markets'.¹¹⁹ Later in January 2011, Russian media again quoted Valery Golubev as saying that Lithuania would not get the price discount (translated from Russian) 'due to the specific application of the country of the EU Third Energy Package'.¹²⁰

Just before the start of 2011, on 17 December 2010, the 5-member board of Lietuvos Dujos, consisting of two appointees each from Gazprom and E.ON and one from the Energy Ministry, approved the gas supply price for 2011. Valery Golubev and Kirill Seleznev represented Gazprom on the board of Lietuvos Dujos. At the time, in addition to this position, Valery Golubev also was the Vice-President of Gazprom. At the end of December 2010, when the CEO of Lietuvos Dujos, Viktoras

¹¹³ A Norwegian company Statoil and a Lithuanian natural gas supplier and trader Litgas linked the price of LNG supplied to Lithuania to the value of the NBP index in 2014: <http://www.litgas.lt/en/litgas-contract-with-statoil-will-help-to-ensure-operations-of-the-lng-terminal-and-to-develop-new-activities/>

¹¹⁴ РИА «Новости» baltinfo.ru, "Gazprom Gave to Latvia 15% Discount for Gas in 2011/«Газпром» Дал Латвии 15-Процентную Скидку На Газ В 2011 Году - Газпром, Энергетика, Цены, Латвия, Газ - БалтИнфо.ру," *BaltInfo.ru*, December 24, 2011, <http://www.baltinfo.ru/2010/12/24/Gazprom-dal-Latvii-15-protcentnuyu-skidku-na-gaz-v-2011-godu-179462/>; РИА Новости, "In 2011 Gazprom will decrease price for gas to Estonia and Latvia by 15%/«Газпром» в 2011 году снизит на 15% цену для Эстонии и Латвии," *Newsportal*, (December 24, 2010), <http://ria.ru/economy/20101224/312876503.html>.

¹¹⁵ Gazprom, "Alexey Miller Holds Talks with Latvian Economy Minister Artis Kampars," Company's website, *Gazprom*, (December 21, 2010), <http://www.gazprom.com/press/news/2010/december/article106925/>.

¹¹⁶ baltinfo.ru, "Gazprom Gave to Latvia 15% Discount for Gas in 2011/«Газпром» Дал Латвии 15-Процентную Скидку На Газ В 2011 Году - Газпром, Энергетика, Цены, Латвия, Газ - БалтИнфо.ру."

¹¹⁷ The Lithuania Tribune, "Lithuania to Miss out on Gas Discount by Gazprom," *News, News*, (December 27, 2010), <http://www.lithuaniantribune.com/2010/12/27/lithuania-to-miss-out-on-gas-discount-by-gazprom/>; Regnum, "Война с 'Газпромом' и Страх перед 'Минским Побойщем': Литва За Неделю - Новости России -," *News Agency, IA Regnum*, (December 2010), <http://www.regnum.ru/news/1361966.html>.

¹¹⁸ The Lithuania Tribune, "Lithuania to Miss out on Gas Discount by Gazprom."

¹¹⁹ Vesti.ru, "Latvia and Estonia may Receive a Discount for Gas/Латвия и Эстония могут получить скидку на газ (in Russian only)," December 24, 2010, <http://www.vesti.ru/doc.html?id=416534>.

¹²⁰ Natalia Grib, "Gazprom provided partners with the price; some of them with discount/ 'Газпром' дал партнерам цену // Некоторым — со скидкой," *Kommersant*, January 11, 2011, <http://www.kommersant.ru/doc/1565481>.



Valentukevičius and his deputy signed the relevant addendum to the Long-Term Agreement, Valery Golubev ‘changed his hat’ and signed the agreement on behalf of Gazprom.¹²¹

Some members of the Social Democrat party blamed the implementation of ownership unbundling for the high prices.¹²² Conversely, based on a survey in May-June 2011, the rising prices persuaded the general Lithuanian public that stronger separation and unbundling was necessary. The survey revealed that 75% of the respondents believed that the price that Lithuania had paid for natural gas was ‘unfair’. According to them, the prices had not corresponded to the income level in the country nor the EU average. Thus, 79% of the respondents supported the unbundling of the transmission system from the supply of gas in order to increase competition.¹²³

Lithuania continued to pay more for gas than the other two Baltic States until the end of 2014, and since then the price has fallen. Along with the planned arrival of the LNG regasification terminal Independence in Lithuania,¹²⁴ Gazprom reportedly proposed a 20% discount for natural gas sold to the Lithuanian gas utility Lietuvos Dujos ‘retroactively’ starting from January 2013.¹²⁵ Even though some energy researchers foresee a possibility of Gazprom involving itself in a gas ‘price war’ to protect its market share against US LNG,¹²⁶ the decreasing gas prices to Lithuania also could have been motivated by the looming Lietuvos Dujos arbitration proceedings in 2014 to demand a contractual price adjustment for natural gas supplies.¹²⁷ More details on the implemented and planned arbitration proceedings are in the further sections.

6. Moving to the International Level

In order to strengthen its position vis-à-vis Gazprom, Lithuanian government representatives took a number of other steps against the Russian energy giant: inviting the Commission to the negotiations with E.ON and Gazprom, submitting a complaint to the European Commission’s Directorate General (DG) Competition and resorting to legal actions. On the other hand, after unsuccessful attempts to persuade the Lithuanian Parliament to suspend the adoption of the Law on Natural Gas in 2011, Gazprom initiated international investment arbitrations, while E.ON abstained from such actions. All those actions moved the battlefield from the domestic to the international level.

6.1 European Commission’s Involvement

Quite soon after it made a political decision to implement ownership unbundling, Lithuania attempted to shift the arena of decision making to Brussels and engaged the Commission’s DG for Energy (DG ENER).¹²⁸ Firstly, in the beginning of 2010, the engagement involved the EC’s comments and feedback about the draft legal acts that transposed the Directive.¹²⁹ The EC commented on draft laws on Natural Gas Act and LNG Law,¹³⁰ in other words, it ensured ‘real-time compliance’.¹³¹ Arvydas

¹²¹ Arbitration Institute of the Stockholm Chamber of Commerce (2012), pp 35–36.

¹²² BNS, “B.Vėsaitė about the Highest Gas Prices in Europe ‘We Are Paying for the Past Mistakes’/ Apie Didžiausią Dujų Kainą Europoje: Mokame Už Padarytas Klaidas,” *DELFI*, April 4, 2013, <http://www.delfi.lt/verslas/energetika/bvesaite-apie-didziausia-duju-kaina-europoje-mokame-uz-padarytas-klaidas.d?id=61062229>.

¹²³ ELTA, “75% of the Lithuanian Inhabitants Believe That the Gas Price Is unfair/75 Proc. Gyventojų Įsitikinę – Dujų Kaina Neteisinga,” News, *Veidas*, (June 21, 2011), <http://www.veidas.lt/75-proc-gyventoju-isitikine-duju-kaina-neteisinga>.

¹²⁴ ship-technology.com, “Independence LNG Floating Storage Regasification Unit (LNG FSRU) - Ship Technology,” 2014, <http://www.ship-technology.com/projects/independence-lng-floating-storage-regasification-unit-lng-fsru/>.

¹²⁵ RIA Novosti, “Gazprom, Lithuania Strike Deal on 20% Gas Price Cut,” *RIA Novosti*, May 15, 2014,

<http://en.ria.ru/world/20140515/189839876/Gazprom-Lithuania-Strike-Deal-on-20-Gas-Price-Cut.html>; Joshua Posaner, “Lithuania Gets 24% Gazprom Discount - Natural Gas Daily - Interfax Global Energy,” *Interfax*, accessed June 17, 2014, <http://interfaxenergy.com/gasdaily/article/7932/lithuania-gets-24-gazprom-discount>.

¹²⁶ Henderson (2016).

¹²⁷ Gazprom (2014), p. 126; also Former High-level Official of the Ministry of Energy after the 2012 Elections, Natural gas sector reform in Lithuania (in Lithuanian), tête-à-tête, October 13, 2015.

¹²⁸ Windhoff-Héritier (2001), 259.

¹²⁹ Former Vice-Minister of Energy, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹³⁰ Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).



Sekmokas said: 'The European Commission was following the Natural Gas Act and the LNG Law projects very closely, analysed, criticized and challenged.'¹³²

By 2011, Lithuanian officials also involved the DG ENER officials in their negotiations with the shareholders, E.ON and Gazprom.¹³³ At the time, there had been only one known precedent of the Commission's close involvement in bilateral negotiations between a Member State and its energy suppliers – Poland's negotiations with Gazprom in 2010 about a long-term agreement on transit and the extension of Russian gas supplies delivered through the 'Yamal-Europe' pipeline from Siberia to Poland and subsequently other European countries.¹³⁴ The Commission participated in the negotiations until mid-2014, when E.ON sold the shares of Lietuvos Dujos and its spinoff Amber Grid to the Lithuanian state, soon followed by Gazprom.¹³⁵ On the other hand, Gazprom also increased its presence in Brussels, opening a representative office there in December 2013.¹³⁶

The reason for Lithuania's proactive attempts to involve the EC was the feeling of 'smallness' in front of such powerful opponents as E.ON and Gazprom.¹³⁷ As one interviewee said: 'If we compare our country with those two energy companies, Gazprom, and E.ON, their competences are stronger multiple times, their international experience much stronger <...> For Lithuania, it was a very difficult and complex task exactly because Lithuania was so small'.¹³⁸ Another interviewee explained:

We must admit that, regrettably, in those times neither Lithuania nor Poland had such high-level specialists, especially in legal matters, that could skilfully handle so top-level negotiations. Whenever Gazprom arrived, they would come with a whole group of the highest level and very well paid lawyers from very famous firms. We, as a state, as a ministry, had to rely on what we could get regarding specialists. Even though they were the best in Lithuania, they lacked experience. Now, of course, in this process we built the capacities of our lawyers, but the very beginning was incredibly difficult. In this regard, the Commission both for the Poles and for us meant expertise, knowledge, and qualified, guaranteed and free-of-charge assistance.¹³⁹

The negotiations would have the following format: Lithuania would meet Gazprom with the participation of the Commission and E.ON with the participation of the Commission. Lithuania would also have individual bilateral meetings with Gazprom and separate bilateral meetings with E.ON without the Commission.¹⁴⁰ The Lithuanians also kept the Cabinet of the European Commissioner for Energy, Günther Oettinger informed about the developments. The majority of the meetings were initiated by the Lithuanian side, with an exception of a few organised by the Commission. The Lithuanian officials made sure in their invitations to the meetings to E.ON and Gazprom to highlight that the Commission would also participate. Gazprom skipped some of the meetings, while E.ON would participate in all.¹⁴¹

¹³¹ Pakalkaitė and Thaler (forthcoming).

¹³² Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹³³ Ministry of Energy of the Republic of Lithuania, "Russian Concern Gazprom Was Repeatedly Invited to Negotiate for the Gas Price for Lithuania/Rusijos Koncernas „Gazprom“ Pakartotinai Kviečiamas Derėtis Dėl Dujų Kainos Lietuvai," March 24, 2011, <http://enmin.lrv.lt/lt/naujienos/rusijos-koncernas-gazprom-pakartotinai-kvieciamas-deretis-del-duju-kainos-lietuvai>.

¹³⁴ Brunarska et al. (2011), pp. 45–46.

¹³⁵ Former High-level Official of the Ministry of Energy after the 2012 Elections, Natural gas sector reform in Lithuania (in Lithuanian), tête-à-tête, October 13, 2015.

¹³⁶ Gazprom, "Gazprom Opens Representative Office in Brussels," December 4, 2013, <http://www.gazprom.com/press/news/2013/december/article179535/>.

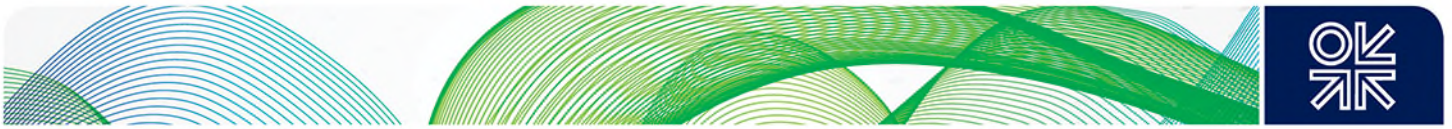
¹³⁷ Former Vice-Minister of Energy, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); European Commission Official, Interview about the EC and Member States' energy policies, tête-à-tête, February 15, 2016; Kubilius, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹³⁸ Former Vice-Minister of Energy, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹³⁹ Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian).

¹⁴⁰ A Lithuanian lawyer that worked with the case

¹⁴¹ Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian).



The EC 'entered into a transnational alliance with domestic reformers',¹⁴² but not about all the aspects that the Lithuanian officials wished. The Lithuanian and the Commission officials would meet before the meetings with E.ON and Gazprom to align their positions, to avoid diverging in front of E.ON and Gazprom.¹⁴³ However, while the Commission stood firmly behind Lithuania, they were concerned by some of the arguments used in the negotiations by the Lithuanian side: in particular Lithuania introduced the price of gas into the negotiation of the implementation of unbundling under the Third Package. Besides that, in calling for Gazprom to give up its shareholding in Lietuvos Dujos, it appeared to the EC to ignore fundamental principles of international law on investment protection. 'We were preaching to the Russians the need to respect the rule of law. "You play in Europe - you play by European rules." But you cannot then say "I want structural unbundling, so I confiscate your assets"', - Philip Lowe, former Director-General for Energy, said. Subsequently, the situation really deteriorated as the Russian side then went to International Chamber of Commerce (ICC) arbitration in Sweden'.¹⁴⁴ In general, the European Commission 'had a categorical position' that Lithuania had to implement the Third Energy Package because it did not ask for a derogation back in 2007-2008 when the Directive was discussed,¹⁴⁵ but it would avoid participating in negotiations of gas import prices to Lithuania.¹⁴⁶ An interviewed lawyer said: 'The Commission put pressure on Lithuania to implement the Third Energy Package, but at the same time it rebutted Gazprom's arguments'.¹⁴⁷

Lithuania would use both the Commission's presence in the room where negotiations took place, and also written communication with Brussels. When the battle between Lithuania and the shareholders of Lietuvos Dujos intensified in 2011, the Lithuanian Minister of Energy published online letters from the EC representatives to the Lithuanian officials, where the EC supported Lithuania's attempts to implement the Third Energy Package. The letters included one from EC president Jose Manuel Barroso to the Prime Minister Andrius Kubilius.¹⁴⁸ Lithuania also used the Commission's opinion about state aid to build the LNG terminal¹⁴⁹ to rebut the arguments of the opponents of the terminal such as the fertilizer producer Achema.¹⁵⁰

6.2 Complaints to DG Competition and Other Counter Attacks

The developments presented in this and the next sections bring several insights. Firstly, both sides, the Lithuanian state and Gazprom, not only challenged each other directly, submitting complaints themselves, but would also involve related parties. In the case of Gazprom, it was not only Gazprom itself that complained about the actions of the Lithuanian state in different institutions. There were also Lietuvos Dujos that it co-owned, also the board members of Lietuvos Dujos, the Lithuania Natural Gas Association, which was registered to the address of Lietuvos Dujos, and the Russian state, which also warned about its intentions to go to arbitration. The same Lietuvos Dujos, already in combination with the Lithuanian government and E.ON, started preparing for arbitration proceedings against Gazprom in early 2014. In addition to the complaints coming directly from the Lithuanian state, Lietuvos Energija (the future owner of Lietuvos Dujos) also joined the line of complainants when it filed a complaint to the Lithuanian Competition Council.

¹⁴² Schneider (2001), p. 77.

¹⁴³ Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian).

¹⁴⁴ Philip Lowe, Interview about the EC's participations in Member States negotiations with energy suppliers, tête-à-tête, April 6, 2016.

¹⁴⁵ Lithuanian lawyer who worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁴⁶ Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); Lowe, Interview about the EC's participations in Member States negotiations with energy suppliers.

¹⁴⁷ Lithuanian lawyer that worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁴⁸ Lowe (2011); Hilbrecht (2010); Barroso (2011).

¹⁴⁹ European Commission (2013b).

¹⁵⁰ Lithuanian lawyer who worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).



As soon as the Russian gas import price to Lithuania went above the gas prices to Latvia and Estonia, in 2011, Lithuanian officials confronted Gazprom. They picked up competition policy tools, both on the EU level, and on the domestic level, and also started an action in a local Lithuanian court. In January 2011, Lithuania submitted the complaint to DG Competition because of alleged abuse of the dominant position of Gazprom.¹⁵¹ According to one interviewee, this complaint to the DG Competition was a 'high-level game' and initially 'shocked' the DG Competition, because until then the energy sector as such was 'some kind of a taboo' in this directorate, meaning, that larger scale antitrust investigations in gas were not an area of its ordinary engagement. Even more, the complaint came from a small country. However, the EC must respond to all non-anonymous complaints, and therefore had to prepare an answer. If the DG Competition had dismissed the complaint as lacking grounds, it could have been inferred as turning a blind eye to possibly anticompetitive practices.¹⁵²

The response from the DG Competition came as a pan-Central Eastern European 'dawn raid' in September 2011, when it commenced inspections at the premises of Gazprom's affiliates in central and eastern Europe: in particular, Gazprom Germania in Germany, EuroPolGas in Poland, VEMEX in the Czech Republic, GWH Gashandel in Austria, Overgas in Bulgaria, Panrusgas in Hungary, Latvijas Gaze in Latvia, Eesti Gaas in Estonia and Lietuvos Dujos in Lithuania. A year later, in September 2012, the European Commission moved to a formal antitrust investigation into Gazprom's operations in the EU. It alleged violations of antimonopoly laws of several European countries, in particular, in segmenting the European gas market, imposing unfair prices on customers and obstructing competition.¹⁵³ Three years later, in September 2015, Gazprom filed its proposal of antitrust investigation settlement to the European Commission.¹⁵⁴ The case is still ongoing.

In addition to the complaint to DG Competition, in spring 2011, the Ministry of Energy of Lithuania brought a claim before the Vilnius District Court to investigate the operations of Lietuvos Dujos and to remove from office three members of the governing body - Viktoras Valentukevičius, Valery Golubev and Kirill Seleznev. The latter two represented Gazprom, as a shareholder, on the company board.¹⁵⁵ The Ministry of Energy claimed that the abovementioned persons were not acting in the best interests of Lietuvos Dujos, when negotiating gas prices with Gazprom and therefore breaching their fiduciary duties to Lietuvos Dujos.¹⁵⁶ In an attempt to stop the local court proceedings Gazprom also started a long arbitration and litigation procedure, which is presented in the next section.

When the Vilnius District Court started the case, Lithuanian officials received even more information from the investigation. They used this information on 3 October 2012 in submitting a subsequent request for arbitration in Stockholm seeking near 1.5 billion euros in damages for allegedly over-priced gas purchases.¹⁵⁷ Lithuania argued that Gazprom had breached the privatisation agreement of Lietuvos Dujos of 2004, according to which gas had to be sold 'based on fair prices that take the market conditions of energy suppliers in the Republic of Lithuania into account'.¹⁵⁸ The Conservative-led government of Lithuania filled a claim 11 days before the general parliament elections of 2012, which meant that the arbitration would have to be followed up by whoever would take office after the elections. In June 2016, almost four years later, it was announced that Lithuania had lost its case at

¹⁵¹ Ministry of Energy of the Republic of Lithuania, "The Ministry of Energy Submitted a Complaint to the EC about Gazprom's Abuse of the Monopoly Position/Energetikos Ministerija Pateikė Skundą Europos Komisijai Dėl „Gazprom“ Piktnaudžiavimo Dominuojančia Padėtimi," January 25, 2011, <http://www.enmin.lt/lt/news/others/detail.php?ID=1198>.

¹⁵² Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian).

¹⁵³ Gazprom (2013b), p. 168.

¹⁵⁴ Gazprom (2016).

¹⁵⁵ Gazprom (2013a), p. 167.

¹⁵⁶ Wathélet (2014), p. 32.

¹⁵⁷ Škiudas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); Former Official from the Lithuanian President's administration, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian), February 7, 2015.

¹⁵⁸ Lithuanian lawyer who worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); Gazprom and Lithuanian State Property Fund (2004).



the Arbitration Institute of the SCC. The arbitration court ruled that the term ‘fair price’ in the privatisation agreement was too vague to assess losses and award compensation.¹⁵⁹

As a general strategy, in the negotiations with the shareholders of Lietuvos Dujos, Lithuania purposefully attempted to separate E.ON’s interests from Gazprom’s and to talk E.ON out of supporting Gazprom.¹⁶⁰ Though E.ON never officially left the side of Gazprom, it reportedly offered to supply a Lithuanian client cheaper gas than Gazprom using a swap arrangement,¹⁶¹ but the acquisition did not go through. The Lithuanian state used this incident as an instance of Gazprom’s restrictions on buying gas from third parties.¹⁶² In July 2012, government-owned Lietuvos Energija submitted a complaint against Gazprom to the Lithuanian Competition Council. Two years later, the Competition Council found that Gazprom created obstacles for Lietuvos Energija to acquire alternative gas and in this way breached concentration requirements and imposed a 36 million euros fine.¹⁶³ Gazprom challenged the decision in the courts. As of June 2016, the case was in the Supreme Administrative Court of Lithuania.¹⁶⁴

E.ON sided with Lithuania again in January 2014, when at a shareholders’ meeting of Lietuvos Dujos, the Ministry of Energy of Lithuania and E.ON, which, combined, held a majority of the equity interests in Lietuvos Dujos, voted in favour of initiating arbitration proceedings against Gazprom to demand a contractual price adjustment for natural gas supplies to Lietuvos Dujos. In May 2014, Lietuvos Dujos signed a supplement to its gas supply contract with Gazprom granting Lietuvos Dujos a price discount and an agreement waiving all existing or potential claims for retroactive price revision on the ground of any actual or legal circumstances which occurred before January 1, 2013. Lietuvos Dujos also admitted that, upon conclusion of these documents, they consider the pricing issue settled and will not claim any price revision relating to the aforementioned periods in the future. Lietuvos Dujos ceased preparations for arbitration proceedings.¹⁶⁵

6.3 Complaints, Litigations and Arbitration

Lithuanian politicians were not the only ones attempting to involve the international institutions; such attempts also came from the opponents of ownership unbundling and of the planned LNG terminal. Since 2010, Gazprom had resorted to arbitration against Lithuania. In one period in 2012, Gazprom had three international arbitration proceedings open against Lithuania, two directly related to Lithuania’s implementation of the Third Natural Gas Directive, and one formally unrelated. As one interviewee from Lithuania said: ‘After all, three international arbitrations was a difficult matter for a small country’.¹⁶⁶ All of the main steps and counter steps are presented in detail in the table in the annexes, and this section provides a broader overview of the cases chronologically.

Gazprom started the first arbitration procedure against Lithuania in March 2010. It filed a claim with the International Court of Arbitration of the International Chamber of Commerce (Paris) challenging the introduction of the Lithuanian tariff regulation of the price of thermal energy of Kaunas CPH (KTE), the main owner of which was Gazprom. This case was not directly related with the implementation of the Third Natural Gas Directive in Lithuania. However, on 5 July the same year, Gazprom notified

¹⁵⁹ Reuters News, “Lithuania Loses Case against Gazprom at Stockholm Arbitration Court | Agricultural Commodities | Reuters,” *Reuters Africa*, June 22, 2016, <http://af.reuters.com/article/commoditiesNews/idAFL8N19E2FX>.

¹⁶⁰ Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁶¹ Sekmokas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC’s participations in Member States negotiations with energy suppliers (in Lithuanian).

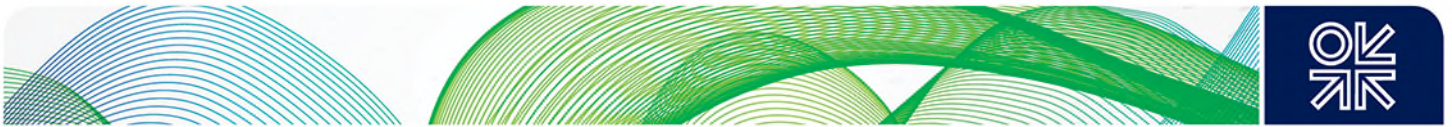
¹⁶² Former Official from the Lithuanian President’s administration, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁶³ Competition Council of the Republic of Lithuania (2014).

¹⁶⁴ BNS, “Gazprom challenged the court’s decision about the 36 million euro fine/„Gazprom“ apskundė teismo sprendimą dėl 36 mln. eurų baudos,” News Agency, Baltic News Service, (November 25, 2015), <http://www.bns.lt/topic/1912/news/48700553/>.

¹⁶⁵ Gazprom (2014), 126.

¹⁶⁶ Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC’s participations in Member States negotiations with energy suppliers (in Lithuanian).



Lithuania about an investment dispute with regard to the draft Natural Gas Law implementing the EU Third Energy Package. A number of meetings were held with Gazprom in the autumn of 2010. This notice later developed into the third, an investment dispute, under UNCITRAL arbitration rules.¹⁶⁷

The second arbitration proceeding took place in Stockholm. Firstly, in the same month when the Lithuanian Parliament was in the process of adopting the Natural Gas Law, in June 2011, Gazprom attempted to move the dispute settlement from the national Lithuanian court to international arbitration and initiated an Emergency Arbitration proceeding in the Stockholm Chamber of Commerce. A sole arbitrator, Albert Jan van den Berg ruled against Gazprom as he did not find urgency in its application.¹⁶⁸ In August 2011, Gazprom proceeded by submitting a formal request for arbitration to the ICC Arbitration in Stockholm against the Ministry of Energy of Lithuania, acting on behalf of the Republic of Lithuania. Gazprom stated that the earlier claim of spring 2011 by the Ministry of Energy in the Vilnius District Court violated the shareholders' agreement in respect of Lietuvos Dujos, and that the Vilnius District Court did not have jurisdiction to resolve disputes between the shareholders.¹⁶⁹ This action moved the conflict out of the Vilnius-Brussels perimeter to a wider international arena and started dispersing the influence of the Commission.

Gazprom extended the dispute with the Republic of Lithuania in March 2012 by the third international arbitration proceedings that it initiated before the Permanent Court of Arbitration in The Hague.¹⁷⁰ Under the United Nations Commission on International Trade Law (UNCITRAL) Gazprom sought to 'protect their investments in the Republic of Lithuania'.¹⁷¹ Gazprom claimed that in transposing and implementing the EU directive the Republic of Lithuania breached its obligations under the Treaty of 29 June 1999 between the Government of the Russian Federation and the Government of the Republic of Lithuania on the encouragement and mutual protection of investment.¹⁷² According to some interviewees, in approximately 2012-2013 there was also a diplomatic exchange with Russia which warned Lithuania that Russia as a state would also start an investment arbitration against the Lithuanian state based on the same Lithuania - Russian Federation Bilateral Investment Treaty as Gazprom had done.¹⁷³ This was never executed. Gazprom withdrew the investment arbitration claim in April 2015, after it had sold all its shares in the Lithuanian gas sector to the Lithuanian state.¹⁷⁴

While Gazprom challenged the implementation of the Third Natural Gas Directive in Lithuania, other actors opposed the various aspects of LNG terminal project. In the second half of 2012, after resisting the planned requirement for all importers of gas to import at least 25% via the terminal, Achema complained to the Commission. The EC in turn started a pilot procedure,¹⁷⁵ which lost its relevance in 2013-2014 when the Parliament cancelled the '25% rule'.¹⁷⁶ Then in November 2012, the Lithuanian Gas Association, which represented gas companies that imported and supplied gas for re-sale to the national wholesale and to the retail market, filed a complaint to DG Competition arguing that the LNG Terminal would be receiving illegal and incompatible state aid.¹⁷⁷ The main members of the association had ownership and/or long-term supply relations with Gazprom, and the association was

¹⁶⁷ Ministry of Energy of the Republic of Lithuania, "Confirmation about the Notification by Gazprom about the Investment Dispute with regards to the Draft Natural Gas Law Implementing the EU Third Energy Package," May 13, 2016.

¹⁶⁸ Arbitration Institute of the Stockholm Chamber of Commerce (2012), pp. 20-21.

¹⁶⁹ Gazprom (2013b), p. 17.

¹⁷⁰ Wathelet (2014).

¹⁷¹ Gazprom (2013a), p. 168.

¹⁷² Wathelet (2014), p. 36.

¹⁷³ Lithuanian lawyer who worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); Former High-level Official of the Ministry of Energy after the 2012 Elections, Natural gas sector reform in Lithuania (in Lithuanian).

¹⁷⁴ Ministry of Energy of the Republic of Lithuania, "Gazprom Withdrew Its Claim Against Lithuania," "Gazprom" Atsiėmė Ieškinį Prieš Lietuvą (in Lithuanian Only)," Institutional website, (April 2, 2015), <http://enmin.lrv.lt/lt/naujienos/gazprom-atsieme-ieskini-pries-lietuva>.

¹⁷⁵ Eglė Juršytė, "Achema's Protest against the LNG Moved to Brussels/Achemos' protestas Dėl SkGD Persikėlė į Briuselį," Business Daily, *Vz.lt*, (October 25, 2012), <http://vz.lt/archive/article/2012/10/25/achemos-protestas-del-skgd-periskele-i-briuseli>.

¹⁷⁶ Government of the Republic of Lithuania (2013); Seimas of the Republic of Lithuania (2013b), Homeland Union (2016).

¹⁷⁷ European Commission (2013b), p. 1.



registered to the address of Lietuvos Dujos. The president of the association at the time was Viktoras Valentukevičius, the CEO of Lietuvos Dujos,¹⁷⁸ which was co-owned by Gazprom and also had the long-term gas supply contract until the end of 2015. The vice-president of the association was a delegate from Dujotekana, the second largest natural gas supplier both in the wholesale and retail markets, which had a take-or-pay supply contact with LT Gas Stream AG, an intermediary seller of natural gas fully owned by Gazprom.¹⁷⁹ Based on this complaint and the notification about the planned investment into LNG by Lithuania, the DG Competition started the investigation into the case. In November 2013, it concluded that the state guarantee and the LNG supplement (the special levy imposed on users of the transmission system and collected to finance part of the costs of constructing and operating the terminal and related infrastructure¹⁸⁰), were compatible with the internal market.¹⁸¹

Some resistance against the LNG terminal came from outside the main battle among the domestic actors and international energy companies. In early summer of 2013, Lithuania's neighbour Latvia reportedly attempted to block an EUR 87 million loan by the European Investment Bank by intending to vote against it in the decisive meeting.¹⁸² According to some of the Lithuanian interviewees, the motives of the Latvian officials could have been their wish to build a regional Baltic LNG terminal instead.¹⁸³

Altogether, in June 2016, only two cases from all those mentioned above were still open – the European Commission's antitrust investigation of Gazprom activity in the EU and Gazprom challenging the 36 million euros fine imposed by the Lithuanian Competition Council. With regard to the claim by the Ministry of Energy that the Vilnius District Court should investigate the operations of Lietuvos Dujos and remove three officials from office, the Ministry withdrew the claim in 2016. It had taken prolonged arbitration and litigation, the case reaching the European Court of Justice, the Lithuania state buying the shares of Lietuvos Dujos and liquidating it, and the members in question leaving company.¹⁸⁴

7. The Tipping Point

2012, the year of the next general election in Lithuania, marked the tipping point in Lithuania's negotiations with the shareholders of Lietuvos Dujos and in the LNG terminal project. The events in 2012 are significant for several reasons. Firstly, although the steps taken by Gazprom at first sight appear to contradict each other, it is likely that the company was going into some level of dialogue with the Lithuanian Government despite the arbitrations, which it could have used to strengthen its position in the negotiations. Secondly, by co-signing a statement by a Member State and a third country supplier in February 2012, the European Commission stepped out of the zone of an 'observer' and 'advisor' in the negotiations, which signalled the increasing role of the Commission in bilateral negotiations involving EU Member States.

¹⁷⁸ Lithuanian Gas Association, "History/Istorija," Company's website, *Lietuvos Dujų Asociacija*, (2016), <http://dua.lt/lietuvos-duju-asociacija/istorija/>.

¹⁷⁹ European Commission (2013b), pp. 17–18. .

¹⁸⁰ Starting from 2015, Lithuanian transmission system users have been paying a regulated security of supply component (charge). The Supply Security Charge as set by the NCC on 13 May 2016, effective from 1 July 2016 amounts to EUR 354.61 per MWh / day / year (exclusive of VAT). See more: <https://www.ambergrid.lt/en/transportation-services/tariffs-prices/tariffseffectivefrom>.

¹⁸¹ European Commission (2013b), p. 36. .

¹⁸² Former High-level official of the Ministry of Energy of Lithuania, Interview about the EC's participations in Member States negotiations with energy suppliers (in Lithuanian); Former Official from the Lithuanian President's administration, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian); Rytas Staselis, "Latvia Tried to Block the Loan/Latvija bandė blokuoti paskolą," *Verslo žinios*, June 11, 2013, 111/2013 edition.

¹⁸³ Former Official from the Lithuanian President's administration, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁸⁴ Supreme Court of Lithuania (2016).



As the laws that transposed the Third Energy Package required, on 28 October 2011 the Lithuanian Government adopted a resolution which tossed the ball to implement the unbundling to the main shareholders of Lietuvos Dujos, Gazprom and E.ON. They had to decide whether to implement ownership unbundling voluntarily through a commercial transaction or through a default scenario that required mandatory ownership unbundling. The choice of the shareholders had to be submitted as an action plan to the National Commission for Energy Control and Prices by the end of March 2012.¹⁸⁵ On the same day, the Ministry of Energy of Lithuania announced that it had reached 'breakthrough' and both the DG Energy and E.ON 'tuned up' the final date of unbundling (2014 October 31) and the main provisions of the unbundling procedure. The Ministry indicated that only E.ON had participated in discussions before then: 'The other shareholder of Lietuvos Dujos, Gazprom, did not submit comments regarding the implementation plan of the Law on Natural Gas and the description of the procedure. Neither Gazprom participated in the discussions on preparation of these documents'.¹⁸⁶

Gazprom, however, soon started reaching out and contacted the office of Prime Minister Andrius Kubilius to set up meetings with him and Alexander Medvedev, Deputy Chairman of the Gazprom Management Committee.¹⁸⁷ In February 2012, two such meetings took place in Vilnius.¹⁸⁸ In the second meeting on 27 February 2012, where Philip Lowe from the European Commission also participated, the energy minister Arvydas Sekmokas, Alexander Medvedev and Philip Lowe co-signed a joint statement in which they agreed to a roadmap, which envisaged the postponement of the deadline for the submission of the implementation plan to the end of May 2012. The roadmap, however, did not postpone the final date of implementation, the end of October 2014. The joint statement reads as follows:

It was agreed today between representatives of the Lithuanian government, Gazprom and the European Commission that in the light of the objective of implementing the government's decision for ownership unbundling of the Lithuanian gas transmission and distribution network by end 2014, it is necessary to enter immediately into negotiation to resolve outstanding issues relating to the unbundling process, to the transit of gas to Kaliningrad, to the future term and offtake volumes and to the valuation of the unbundled company with a view to adopting by 31st May 2012 an agreed roadmap for final implementation of unbundling. The intermediate target dates in the Action Plan adopted in the government's resolution of 28th October 2011 will be amended accordingly.¹⁸⁹

Three days after the signing of the joint statement Gazprom initiated an international investment arbitration against Lithuania, which shows that during Aleksander Medvedev's visit to Vilnius the documents probably were under preparation. Despite this, the Government kept its promise to postpone the deadline for the submission of the implementation plan by two months, but remained strict about the final deadline for the implementation of ownership unbundling – end of October 2014. A compromise was found a few days before the general meeting of the shareholders planned on 28 May 2012, which had to decide on the route of unbundling: voluntary or the default under the resolution of the Lithuanian government of 28 October 2011. Gazprom and E.ON opted for the voluntary implementation, which gave them a little bit more flexibility and time in the process.

¹⁸⁵ Government of the Republic of Lithuania (2011b), para. 5.

¹⁸⁶ Ministry of Energy of Lithuania, "A Breakthrough in the Energy Sector - Lithuania and E.ON Have Agreed about the Implementation of the Third Energy Package/Proveržis Energetikoje – Lietuva Ir E.ON Susitarė Dėl ES Trečiojo Paketo Nuostatų Įgyvendinimo (in Lithuanian only)," October 28, 2011, <http://enmin.lrv.lt/lt/naujienos/proverzis-energetikoje-lietuva-ir-e-on-susitare-del-es-treciojo-paketo-nuostatu-igyvendinimo>.

¹⁸⁷ Kubilius, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁸⁸ Jurgita Lapienytė, "Lawyer V.Bernatonis: Gazprom Will Have to Comply with The Lithuanian Requirements /Teisininkas Vilius Bernatonis: „Gazprom“ Turės Nusilenkti Lietuvai (in Lithuanian Only)," *15min.lt/verslas*, February 7, 2012, <http://www.15min.lt/verslas/naujiena/finansai/teisininkas-vilius-bernatonis-gazprom-tures-nusilenkti-lietuvai-662-194385>; BNS, "Unannounced Meeting of A.Kubilius and A.Medvedev Took place/Vyriausybėje Vyko Neskelbtas Andriaus Kubiliaus Ir „Gazprom Export“ Vadovo Aleksandro Medvedevo Susitikimas (in Lithuanian Only)," *15min.lt/verslas*, February 27, 2012, <http://www.15min.lt/verslas/naujiena/finansai/vyriausybeje-vyko-neskelbtas-andriaus-kubiliaus-ir-gazprom-export-vadovo-aleksandro-medvedevo-susitikimas-662-199453>.

¹⁸⁹ Lowe, Sekmokas, and Medvedev (2012).



After so much resistance, it came ‘as a surprise to the Commission’¹⁹⁰ that on May 28, 2012, the shareholders of Lietuvos Dujos convened an extraordinary shareholders meeting and approved the principles of the voluntary separation of the operations relating to gas transmission from the distribution of gas. In the meeting, not only E.ON, but also Gazprom cast their vote in favour of the plan, however saving the option of investment arbitration ‘primarily to avoid adverse consequences, including the possibility of sanctions brought by the Lithuanian state authorities against Lietuvos Dujos, its management, and shareholders’.¹⁹¹ Based on this decision, Amber Grid, a spinoff company that took over the natural gas transmission activities of Lietuvos Dujos was created a year later.¹⁹²

At the same time, in March 2012, state-owned company Klaipėdos Nafta signed an agreement with the Norwegian company, Høegh LNG to build a floating liquefied natural gas storage and regasification unit (FSRU), which was later called Independence. The lease agreement of a 10-year period has a purchase option. The maximum technical regasification capacity is up to 4 bcm/year (approximately 11mmcm/day).¹⁹³ The FSRU Independence had to be operational by 3 December 2014, the total value of the contract in 10 years could amount to very roughly €500 million (the proposed rental price of the FSRU was \$189,000/ day¹⁹⁴). In order to save time in building it, the Klaipėda LNG terminal was considered as a national terminal and it did not apply for a status of a project of common interest (PCI).

8. ‘Lock-In’ Effect after the 2012 Election

In October 2012, after the general election, the Lithuanian Social Democratic Party, Labour Party, Party ‘Order and Justice’ and Lithuanian Poles’ Electoral Action formed a ruling coalition, and a Social Democrat, Algirdas Butkevicius became the Prime Minister. Andrius Kubilius became the leader of Opposition in Seimas.¹⁹⁵ However, even though the composition of the party coalition that came into office became similar to the one in 2004-2008, the new Parliament did not recall the Natural Gas Act and did not cancel the contract to establish a floating LNG terminal.

They continued the natural gas sector policy that they inherited from the centre-right coalition Government, except for some episodes, such as a request to the Constitutional Court or a temporary commission to investigate energy. The first episode was soon after the 2012 election results were known, but the Parliament still transitionally had the structure of the 2008 election. On 29 October 2012, a group of members of the Parliament, many of whom were Social Democrats,¹⁹⁶ submitted a petition to the Constitutional Court of Lithuania, requesting an investigation into whether certain articles of the Law on LNG did not violate the Constitution. Another major episode took place from June 2013 to April 2014, when the Parliament formed a temporary commission to investigate energy, which was led by Social Democrat Artūras Skardžius.¹⁹⁷ By the end of 2013, the leader of the commission Artūras Skardžius became especially vocal against Høegh LNG, which owned the FLNG vessel,¹⁹⁸ and the Norwegian ambassador sent a letter to the Lithuanian politicians in defence of the

¹⁹⁰ Lithuanian lawyer who worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

¹⁹¹ Gazprom (2013a), p. 168.

¹⁹² Lietuvos Dujos (2013).

¹⁹³ European Commission (2013b).

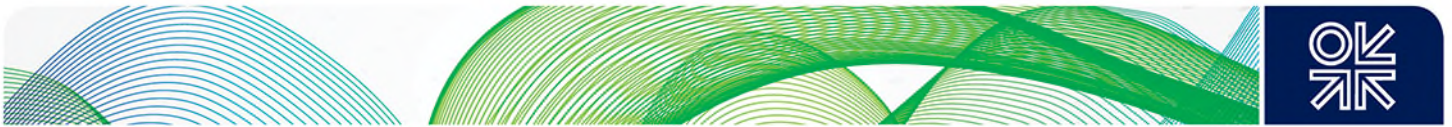
¹⁹⁴ Public Procurement Office (2012).

¹⁹⁵ Seimas of the Republic of Lithuania (2016).

¹⁹⁶ Many of the Social Democrats that submitted the petition questioning the LNG legislation, actually cast their votes in favour of this legislation some months prior.

¹⁹⁷ Seimas of the Republic of Lithuania (2013a).

¹⁹⁸ BNS, “Interview with the CEO of Hoegh LNG,” November 4, 2013, <http://www.lithuaniantribune.com/55782/interview-with-the-ceo-of-hoegh-lng-201355782/>; Alia Zinkuvienė, “LNG Terminal Becomes a Bermuda Triangle/SGD Terminalas Virsta Bermudu Trikampiu (in Lithuanian Only),” October 21, 2013, http://www.respublika.lt/lt/naujienos/lietuva/verslas/sgd_terminalas_virsta_bermudu_trikampiu/.



Norwegian company.¹⁹⁹ Following this, the Prime Minister Algirdas Butkevičius told that the commission 'exceeded its powers'.²⁰⁰

Other than these two occasions, the Social Democrat coalition government of 2012-2016 continued simultaneously the arbitration proceedings and the negotiations with Gazprom and the LNG terminal project. In accordance with the provisions of the Third Energy Package regarding the split between gas transmission and distribution activities, in August 2013 Lietuvos Dujos transferred assets, liabilities and rights related to gas transportation to Amber Grid. In January 2014, Lithuanian officials persuaded E.ON to side against Gazprom to enable Lietuvos Dujos to go to a new arbitration against Gazprom's gas prices in 2014, which led to a gas price decrease.²⁰¹

The rhetoric of the Social Democrats compared to the period before the autumn of 2012 became very different. In this period, when the shares of Lietuvos Dujos and Amber Grid were still co-owned by E.ON and Gazprom, the Social Democrat Prime Minister Algirdas Butkevičius in a Lithuanian media outlet interview admitted that Gazprom was still raising the question of the implementation of the Third Natural Gas Directive. The response by Algirdas Butkevičius to journalists shows that he was non-aligned with Gazprom: 'They are very unhappy that Lithuania goes down the path of the Third Energy Package and raised this issue multiple times. The question of arbitration also worries them. But we highlighted very clearly, that all this Energy Package, envisaged by the previous Government, does not change, and our Government is not planning to turn the horses around'.²⁰²

The Lithuanian state's actions also followed the changed rhetoric of those in power from 2012. When, following the unbundling requirements, Gazprom and E.ON sold their shares in Lietuvos Dujos and its spin-off Amber Grid in 2014, government-owned Lietuvos Energija acquired the shares. In 2014, a new state-owned company Litgas concluded a 5-year contract with Statoil for the delivery of LNG at a level of 0.5 bcm/year and later extended it by five more years (and decreased the minimum amount). The Independence arrived at Klaipėda in October 2014 and became operational in 2015. Moreover, Lithuania started shipping small amounts of gas across Latvia to Estonia.

This shows that a locking-in of the energy policies of the previous Government had taken place, and the party change in the Government after 2012 did not have a negative impact on the further development of reform. The locking-in effect may be explained by a number of mutually reinforcing causes. Firstly, based on interviews, the centre-right government of 2008-2012 was deliberately attempting to reach the point of no return of the policies. In April 2012, in an election year, they unsuccessfully proposed for the parties to sign an agreement to ensure continuity of the energy strategy projects.²⁰³ Secondly, the agreement between Klaipėdos Nafta and Höegh LNG to build the vessel Independence was deliberately very costly to reverse because of fines in the agreement. A former advisor to the prime minister Kęstutis Škiudas said: 'A point of no return was the most important for us with regards the political elections cycle. We considered having reached the point of no return when we would sign a mutually binding agreement. ... There were financial obligations and

¹⁹⁹ Romualdas Bakutis, "Is the LNG Terminal Being Built Against the Laws?/SGD Terminalas Statomas Pažeidžiant Įstatymus? (In Lithuanian Only)," *Alfa.lt*, November 6, 2013, <http://www.alfa.lt/straipsnis/15162295/sgd-terminalas-statomas-pazeidziant-istatymus>; BNS, "Conservatives Are Requesting to Remove A.Skardžius from the Leading Position of the Temporary Commission/Konservatoriai Prašo Pašalinti Artūrą Skardžių Iš Laikinosios Energetikos Komisijos Vadovų (in Lithuanian Only)," *15min.lt*, October 31, 2013, <http://www.15min.lt/naujiena/aktualu/lietuva/konservatoriai-praso-pasalinti-artura-skardziu-is-laikinosios-energetikos-komisijos-vadovu-56-381603>.

²⁰⁰ ELTA, "A.Butkevičius: The Temporary Commission Overstepped Its mandate/A.Butkevičius: „Laikinoji Energetikos Komisija Viršijo Savo Įgaliojimus“ (in Lithuanian only)," October 31, 2013, <http://verslas.lrytas.lt/energetika/a-butkevicius-laikinoji-energetikos-komisija-virsijo-savo-igaliojimus.htm>.

²⁰¹ Former High-level Official of the Ministry of Energy after the 2012 Elections, Natural gas sector reform in Lithuania (in Lithuanian).

²⁰² Ignas Jačauskas, "For what Issues A. Butkevičius feels Sorry?/Dėl ko gailisi valstybės vairininkas A. Butkevičius? (in Lithuanian only)," *Kauno diena*, January 3, 2014, <http://m.kauno.diena.lt/naujienos/lietuva/politika/del-ko-gailisi-valstybes-vairininkas-butkevicius-608459>.

²⁰³ TV3, "Social Democrats: We Will Not Buy a Cat in a Bag/Socialdemokratai: Nepirksime Katės Maiše," April 16, 2012, <http://balsas.tv3.lt/naujiena/592895/socialdemokratai-nepirksime-kates-maise>.



we did not have a way back – and then the works on the quay and the law started moving on’. According to him, the notion of point-of-no-return came from project management theory and practice, ‘but we made it political’.²⁰⁴

In addition to this, the Commission’s involvement in the earlier negotiations reinforced the locking-in effect. It would have been difficult for a new government to explain to the EC why, after so much effort, the reform was to be reversed.²⁰⁵ The figure of the country’s President, Dalia Grybauskaitė, who had been serving two terms, 2009-2014, and 2014-2019, strongly in support of the reform, is an additional explanation. When Algirdas Butkevičius formed a new government by December 2012, President Dalia Grybauskaitė listed the continuing efforts to decrease dependence on the single energy supplier and finalisation of the LNG terminal project as one of the top priorities for the freshly starting Government.²⁰⁶

A member of the 2012-2016 ruling coalition said: ‘The project of our Government [Gamtinių Dujų Terminalas with Achema in 2008] was ruined, agreements [for the new terminal] were made irreversibly. We can see the agreement in the Secretariat of the Parliament, and it is written on it “irrevocable contract”, and a daily payment is recorded <...> I discussed those issues with the Prime Minister... In the new context, a geopolitical situation, events in Ukraine and general feeling of insecurity... And even though the situation in Ukraine escalated later, when we took office we did not want to conflict with the initiations of the project, the President’s office. Thus, we finalised the LNG project. Nevertheless, it could have been cheaper’.²⁰⁷

Another interviewee, who assumed the office of the energy minister of Lithuania in 2014, explained the locking-in effect rather as due to the maturity of the Lithuanian democracy rather than the logic of consequentiality. Rokas Masiulis said: ‘I think that Lithuania is maturing as a state. And we have matured enough for the political parties to agree among each other about the essential issues. I would say, that this is one of the first examples where the main projects of the state are supported by all political forces. If one started, another can finish it. I consider this to be a stage of a state maturity’.²⁰⁸

9. The Current Situation: Two Ministries, Two Energy Holdings

In May 2014, under the Social Democrat government of Lithuania, E.ON sold its shares in Lietuvos Dujos and Amber Grid, and also 11.76% of shares of the electricity distribution network operator LESTO to the Lithuanian State for €147.3 million.²⁰⁹ Following E.ON, in June 2014 Gazprom sold its 37% interests in associates, Lietuvos Dujos and Amber Grid, to companies controlled by the Republic of Lithuania for €121 million.²¹⁰ Amber Grid was certified as a gas transmission system operator according to the ownership unbundling rules in 2015.²¹¹

As seen in Figure 3 below, in what used to be the area of Lietuvos Dujos, there is now a ring of state-owned companies.²¹² Under the Ministry of Energy of Lithuania companies engaged in transmission

²⁰⁴ Škiudas, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

²⁰⁵ Thus, it was the continuation of the Europeanisation effect.

²⁰⁶ Dalia Grybauskaitė, “President’s Speech after the Meeting with the New Lithuanian government/Prezidentės Pasisakymas Po Susitikimo Su Vyriausybe,” December 17, 2012, <https://www.lrp.lt/lt/prezidentes-pasisakymas-po-susitikimo-su-vyriausybe/kalbos/14985>; Former Official from the Lithuanian President’s administration, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).

²⁰⁷ A member of the Ruling Coalition of 2012-2016, Interview about the Lithuanian Natural Gas Sector (in Lithuanian).

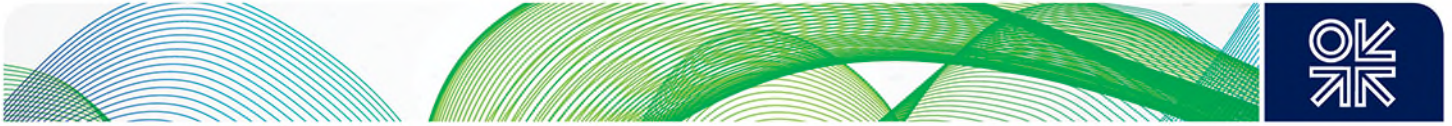
²⁰⁸ Masiulis, Interview about the Lithuanian Natural Gas Sector (in Lithuanian).

²⁰⁹ Government of the Republic of Lithuania, “Signature of an Agreement on the Purchase of E.ON-Owned Shares Will Bring Strategic Benefits to the State,” May 21, 2014, <http://lr.lt/en/news/signature-of-an-agreement-on-the-purchase-of-e-on-owned-shares-will-bring-strategic-br-benefit-to-the-state>.

²¹⁰ Gazprom (2015).

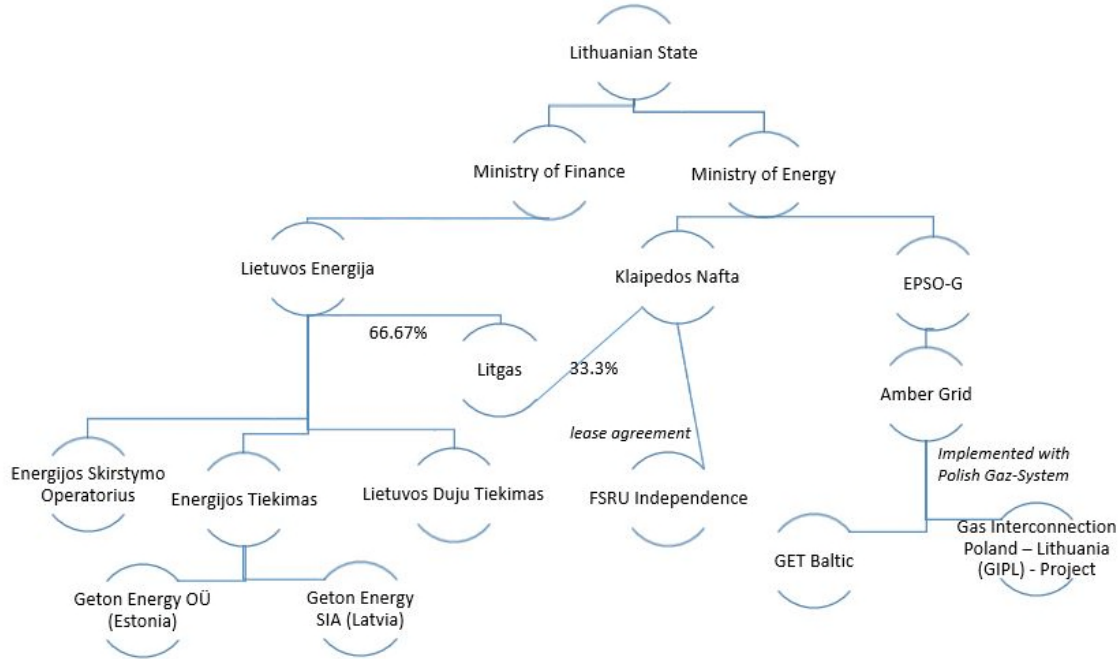
²¹¹ European Commission (2015a).

²¹² The Third Natural Gas Directive does not prescribe or preclude state or private ownership of the natural gas companies. In Article 9 it says that two separate public bodies should be able to control production and supply activities on the one hand and transmission activities on the other [if those natural gas companies are owned by a state].



and other infrastructure activities are placed, some of them via a holding company EPSO-G that was established in 2013. On the other hand, the state owned electricity company group Lietuvos Energija, owned by the Ministry of Finance of Lithuania, controls gas trade, distribution and supply gas companies.

Figure 3: State interests in the Lithuanian gas sector, 2016²¹³



Amber Grid owns and operates the entire gas transmission system of Lithuania. Currently, 96.58% of the shares in Amber Grid are held by the Lithuanian State via the Ministry of Energy, via EPSO-G,²¹⁴ with the remainder being free-float on the stock exchange.²¹⁵ Amber Grid also holds 66% of natural gas exchange GET Baltic. Finnish group Gasum Oy holds the other 34%.²¹⁶ Klaipėdos Nafta, also controlled by the Ministry of Energy, manages the LNG FSRU Independence, and Litgas is the designated supplier via the terminal.

On 1 January 2016, Lietuvos Dujos was merged with LESTO, and the new juridical person, active in electricity and gas distribution, was called Energijos Skirstymo Operatorius. Lietuvos Dujos ceased existing as a juridical person and was deregistered from the registry.²¹⁷ Lietuvos Duju Tiekimas, established in 2014 following the unbundling requirements, is currently responsible for natural gas supply to (mostly) the residential, business and other customers. This company is also owned by Lietuvos Energija: it took over the supply business of Lietuvos Dujos.²¹⁸ Energijos Tiekimas, which had been already previously owned by Lietuvos Energija, also acquired a gas supply licence in addition to its electricity supply licence.²¹⁹

The gas industry has moved from being largely privately owned to being largely state-owned. However, a number of new private energy companies have entered the wholesale and retail level of

²¹³ Made by the author, based on the reports and websites of the companies in Figure 3.

²¹⁴ LT-01116 EPSO-G, "EPSO-G: Energy Evolution. LinkedIn Page.," 2016, <https://www.linkedin.com/company/epso-g>.

²¹⁵ European Commission (2015a).

²¹⁶ GET Baltic, "EPSO-G Company Group," 2016, https://www.getbaltic.lt/uploads/documents/Foto_en/EPso-G_ENG.png.

²¹⁷ Supreme Court of Lithuania (2014).

²¹⁸ Lietuvos Duju Tiekimas (2015), p. 1.

²¹⁹ Lietuvos Energija, "Vision, Mission, Values," Company's website, (2016), <http://www.le.lt/en/about-us/408#vision-mission-values>.



the Lithuanian gas sector by acquiring gas supply licences since 2013, and several of them became active in the market.²²⁰ At the end of 2014, natural gas supply licenses were held by 32 companies, eleven of these were performing supply operations.²²¹

In the beginning of 2016, fertiliser producer Achema chose Statoil via the LNG terminal instead of Gazprom via pipelines to provide gas for 2016. In this way, Achema changed sides in opposing 'interest constellations' and stepped onto the side of the reformers. This tipped the scales of gas supply balance, and in 2016 Norway is expected to supply more gas to the Lithuanian market than Gazprom.²²²

10. Future Outlook: from an Importer to an Exporter

There are two story lines regarding how the natural gas sector of Lithuania may develop – the political and the market-related. On the political side, if in the forthcoming elections of October 2016 either Homeland Union – Lithuanian Christian Democrats (Conservatives) or the Lithuanian Social Democrats gain enough votes to form the ruling coalition, the current Lithuanian gas market trajectory would continue. The Conservatives initiated the reform before 2012, and the Social Democrats continued it when they came into office in 2012, even though they had resisted while in opposition earlier. If the election changes the political landscape in the Lithuanian Parliament, and Liberals Movement or the Lithuanian Peasant and Greens Union (whose popularity has been particularly rising²²³) gain enough support to form the ruling coalition, the prospects will be less clear. In any case, because of the strong support of the current president Dalia Grybauskaitė for the energy independence of Lithuania from Russian supplies, the current trajectory is likely to continue at least until May 2019, when the next presidential elections are due.

Even in case of very significant changes in the political composition in the country, a withdrawal of the ownership unbundling option in the country is highly unlikely. The laws have been changed, the European Commission invested much time and energy in assisting in this process, Lietuvos Dujos has undergone structural changes and does not exist anymore. However, the LNG terminal sphere is more susceptible towards changes, and after mid-2019 it could go in different directions.

Even though the Klaipėda LNG terminal was considered as a national terminal and did not apply for a status of a project of common interest in the EU, Lithuania is promoting the idea of using the LNG Terminal in Klaipėda as the Regional Baltic LNG Terminal in their public communication and presentations.²²⁴ The aggregate gas demand in the Baltic States in 2015 was around 4.5 bcm, and the Lithuanian LNG terminal, if working at full capacity, could cover nearly 90% of the whole Baltic demand. If the Lithuanian government acquires the LNG vessel Independence before its lease runs out in 2024 (about which it started talking in 2016²²⁵), it is likely to remain in Klaipėda port after 2024. After mid-2019, if the Liberals Movement generates the national energy policy, the state's ownership and involvement in strategic energy projects may decrease, private capital could be attracted, and the approach towards the necessity of the acquisition of the boat may be less rigid.

²²⁰ National Commission for Energy Control and Prices, Observatory (2016a), List of License Holders (2016b).

²²¹ National Control Commission for Prices and Energy (2015), p. 26.

²²² Reuters UK, "Norway to Surpass Russia as Lithuania's Top Gas Supplier in 2016."

²²³ Liutauras Gudžinskas, "Results of the Latest Surveys are Warning Both Social Democrats and the Conservatives/Naujosios rinkėjų apklauso – pavojaus signalas ir socialdemokratams, ir konservatoriams (in Lithuanian only)," *15min.lt*, April 25, 2016, <http://www.15min.lt/naujiena/aktualu/komentarai/liutauras-gudzinskas-naujosios-rinkeju-apklauso-pavojaus-signalas-ir-socialdemokratams-ir-konservatoriams-500-616481>.

²²⁴ Nemira Pumprickaitė, "The Minister of Energy About the A.Skardžius Commission: We Lost Two Months/Energetikos Ministras Apie A. Skardžiaus Komisiją: Praradome Du Mėnesius (in Lithuanian Only)," *DELFI*, September 28, 2014, <http://www.delfi.lt/verslas/energetika/energetikos-ministras-apie-a-skardziaus-komisija-praradome-du-menesius.d?id=65970792>.

²²⁵ Stasys Gudavičius, "The Prime Minister in Norway will Consult about buying the LNG Boat Earlier/Premjeras Norvegijoje tarsis dėl SkGD laivo greitesnio išpirkimo (in Lithuanian only)," *vz.lt*, May 2, 2016, <http://vz.lt/sektoariai/energetika/2016/05/02/premjeras-norvegijoje-tarsis-del-skgd-laivo-greitesnio-ispirkimo>.



The FSRU Independence would be even more likely to remain in Klaipėda port after 2024 if the European Commission in one or another form grants it the status of a regional terminal. Such status could possibly mean that no more LNG terminals of a regional scale, would be built in Latvia or Estonia or at least the possible competitors of FSRU Independence would not receive EU funding. Unlike in 2013, neither Finland, nor Latvia have placed the LNG projects on their shores on the second PCI list published by the European Commission in autumn 2015. Both Estonian LNG terminal proposals - Paldiski LNG and Tallinn LNG – have remained on the PCI list.²²⁶ The next PCI list update will take place in 2017, and the Lithuanian energy sector officials may attempt to place the Klaipėda LNG on it if they see any chance to receive support for acquiring the ship. Should Finland, Latvia or Estonia still plan to build a regional LNG terminal and receive EU funding for it, the European Commission would likely in the funding decision take into account if these projects do not gain commercial advantage over the LNG Terminal in Klaipėda. The EU LNG and Storage Strategy of 2016 highlights that ‘as EU funds can help to make up for the weak commercial viability of terminals that are particularly important for security of supply’.²²⁷ Having Klaipėda LNG in place, it is more difficult to argue that additional LNG terminals are as important to the security of supply in the Baltics as would have been before FSRU Independence arrived. If Klaipėda LNG gets regional terminal status and if Lithuania acquires rather than leases the terminal, the Lithuanian energy sector officials may attempt to receive EU support for Klaipėda LNG and count the acquisition of the boat as a new investment.

Regarding gas market developments, the previous long-term supply contract with Gazprom expired in December 2015, and at the beginning of 2016 Lithuania relied on consuming unused take-or-pay gas from Gazprom from the previous period.²²⁸ Lithuanian state-owned energy companies are unlikely to sign a long-term gas supply agreement with Gazprom. In this regards, the current situation in the global LNG market – LNG surplus and low prices – is beneficial for the Lithuanian LNG terminal. The revised long-term supply contract with Statoil (which cut the volumes and prolonged the time period compared to the previous version) is valid until the end of 2024.²²⁹ Gazprom, on the other hand, has turned to auctioning gas in the Baltic market.²³⁰

Regardless of how the gas will be contracted, the Lithuanian state energy companies need to expand gas markets for gas coming via the LNG terminal, and this need will inform future actions. After Gazprom’s price rise from 2011, Lithuania’s total gas consumption started falling from 2012. By 2015 it fell by one fifth from 3.34 bcm in 2011 to 2.65 bcm.²³¹ The fall in gas demand was mostly caused by the heating sector switching to biofuel.²³² Lietuvos Duju Tiekimas predicted that in 2016, the whole Lithuanian demand may fall even further to 2 bcm.²³³ At the same time, the minimal working regasification level of Klaipėda LNG is 540 mcm/year and the maximum capacity is 4 bcm/year. A high level official of a state-owned Lithuanian energy company confirmed this: ‘Of course, we have an ambition to expand the gas trade to the other Baltic States. Just look what a market we have now - it is shrinking and this process is very significant. We have not seen such a contraction in other goods

²²⁶ European Commission (2015c).

²²⁷ European Commission (2016).

²²⁸ BNS, “R. Masiulis:Negotiations with Gazprom - only Commerce/R. Masiulis: derybose su „Gazprom“ – tik komercija (in Lithuanian only),” February 23, 2015, <http://verslas.15min.lt/energetika/r-masiulis-derybose-su-gazprom-tik-komercija.htm>; 15min.lt, “„Gazprom“ Dujas Lietuvai Bandys Parduoti Už Norvegišką Kainą,” March 2, 2016, <http://www.15min.lt/verslas/naujiena/energetika/gazprom-dujas-lietuvai-bandys-parduoti-uz-norvegiska-kaina-664-590235>.

²²⁹ Linas Jegelevičius, “Revised Statoil Contract Cuts Volume and Price for Lithuania,” *Natural Gas Europe*, February 1, 2016, <http://www.naturalgaseurope.com/revised-statoil-contract-a-win-for-lithuanian-government-hole-patching-for-gas-expert-27900>.

²³⁰ Joshua Posaner, “Gazprom Auction Shows New Baltic Market Reality,” *Interfax Global Energy*, March 22, 2016, <http://interfaxenergy.com/gasdaily/article/19668/gazprom-auction-shows-new-baltic-market-reality>.

²³¹ Enerdata (2016).

²³² Rytas Staselis, “The Costs of Biofuel Conversion - Minimal/Biokuro konversijos nauda – minimali (in Lithuanian only),” *Verslo žinios*, March 22, 2015, <http://vz.lt/archive/article/2015/3/13/biokuro-konversijos-nauda-minimali>.

²³³ 15min.lt, “„Gazprom“ Dujas Lietuvai Bandys Parduoti Už Norvegišką Kainą.”



markets or other segments. Gazprom did a “very good” job by “killing” its own market. It “killed” the market both for itself, and for the others, and should put an effort to revive this market as well’.²³⁴

Thus, the Lithuanian representatives have attempted to expand the gas market both by diversifying its possible usage and by increasing the geographical scope of sales beyond the Lithuanian borders. Firstly, in 2015, natural gas supply and trading company Litgas and Norwegian Statoil signed a memorandum of understanding (MoU), regarding establishment of a joint venture company in Lithuania to develop small scale LNG bunkering services. They planned that the new joint venture company would supply LNG as a fuel to ships, small terminals in the Baltic Sea, and transport LNG by truck to on-shore customers.²³⁵ Essentially, they are seizing an opportunity to provide ‘cleaner’ fuel to respond to environmental regulations for shipping in the Baltic Sea area.²³⁶

In addition, 2015 marked the first gas trade in history between the Baltic States, when Lithuanian Litgas sold gas to an Estonian client which was transmitted via the Latvian gas pipeline system, and also obtained permission to trade in Estonian gas market.²³⁷ Following Lithuania, and despite its derogation from the Third Natural Gas Directive, Estonia had transposed the Third Gas Directive fully in April 2014,²³⁸ thus access by Litgas became possible. Even though Latvia did not follow suit immediately and remained derogated, in February 2015, Litgas signed a transit agreement with Latvijas Gaze regarding transit of natural gas through Latvia to Estonia.²³⁹ Moreover, in October 2015, the Lithuanian energy minister Rokas Masiulis and the Latvian Minister of Economic Affairs Dana Reizniece-Ozola signed a MoU to intensify the cooperation between their countries in diversification of natural gas supply by promoting the use of Klaipėda LNG terminal and Inčukalns underground gas storage in Latvia, ‘developing a fully functioning regional gas market and ensuring its long term accessibility for market participants in the Baltic region’.²⁴⁰ In addition, at the end of 2015 the European Commission told Latvia that it had lost its derogation from the Third Natural Gas Directive because it could receive gas via its Baltic neighbour Lithuania. Thus, Lithuania’s Klaipėda FSRU with infrastructure close to the Latvian border removed the country’s status as an ‘energy island’.²⁴¹ Latvia is planning to liberalise its market in 2017.²⁴²

These developments indicate that Lithuania will take upon itself a role of an ‘agent of integration’ and further promote the integration of the national Baltic gas markets into a single market and, later, into a single-price zone. It appears that unlike Lithuania, neither Estonia nor Latvia had concluded a bilateral treaty on the encouragement and mutual protection of investments with Russia. Thus, according to some legal experts, it is more difficult for Gazprom go into international investment arbitration with a case against those countries, when they implement market reforms. This would be more important to Latvia, which is yet to fully transform its gas market.

Given the length of the EC’s ongoing antitrust investigation into Gazprom’s activities and the gravity of the statement of objections issued by the DG Competition, the investigation seems most likely to

²³⁴ Dominykas Tučkus, Interview about the Current Situation and Perspectives of the Lithuanian Natural Gas Market, tête-à-tête, June 11, 2015.

²³⁵ Litgas, “LITGAS and Statoil Prepare Joint Venture to Enter the Baltic Sea Small Scale LNG Market,” *LITGAS*, July 2, 2015, <http://www.litgas.lt/en/litgas-and-statoil-prepare-joint-venture-to-enter-the-baltic-sea-small-scale-lng-market/>.

²³⁶ Tučkus, Interview about the Current Situation and Perspectives of the Lithuanian Natural Gas Market.

²³⁷ Litgas, “LITGAS Obtained Permission to Trade in Estonian Gas Market,” *LITGAS*, February 24, 2015, <http://www.litgas.lt/en/litgas-obtained-permission-to-trade-in-estonian-gas-market/>; Litgas, “LITGAS Will Supply Gas for the Third Estonian Company,” *LITGAS*, February 23, 2015, <http://www.litgas.lt/en/litgas-will-supply-gas-for-the-third-estonian-company/>.

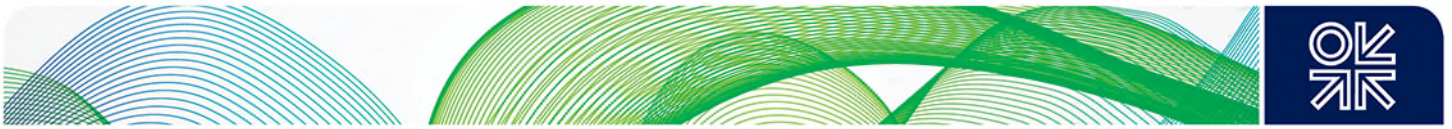
²³⁸ European Commission (2015b), Country Report - Estonia.

²³⁹ Litgas, “LITGAS Has Secured Gas Transit through Latvia,” February 20, 2015, <http://www.litgas.lt/en/litgas-has-secured-gas-transit-through-latvia/>.

²⁴⁰ Masiulis and Reizniece-Ozola (2015).

²⁴¹ Joshua Posaner, “Latvia under Pressure on EU Unbundling Rules,” *Interfax Global Energy*, December 10, 2015, <http://interfaxenergy.com/gasdaily/article/18627/latvia-under-pressure-on-eu-unbundling-rules>.

²⁴² Saeima Press Service, “Consumer Gas Market Not to Be Liberalised until April 2017,” March 13, 2014, <http://saeima.lv/en/news/saeima-news/21949-consumer-gas-market-not-to-be-liberalised-until-april-2017>.



finish in a settlement or decision that Gazprom has breached the competition rules in central and eastern Europe rather than case closure. In any of those cases, it may possibly lead to financial compensation to Lithuania. Moreover, the EC suspects that among other possible abuses of the dominant position, Gazprom's territorial restrictions may have resulted in higher gas prices and allowed Gazprom to pursue an unfair pricing policy in five Member States, Bulgaria, Estonia, Latvia, Lithuania and Poland.²⁴³ If the EC determines that Gazprom hindered cross-border gas sales in these countries, the settlement decision or a decision that Gazprom breached EU antitrust rules may entail mandatory gas release or capacity release obligations. This may encourage cross-border trade among the Baltic States and a single Baltic gas market even further.

When by December 2019 the first gas interconnector between Poland and Lithuania (GIPL) is built,²⁴⁴ it may create opportunities to export the gas received via Klaipėda LNG not only to Poland, but also to Ukraine via reverse flow in the Brotherhood system on the Polish-Ukrainian border. The size of the Polish and Ukrainian markets – in relation to the size of Klaipėda LNG capacities - would limit the impact of its potential contribution, but would be beneficial for the traders of the Klaipėda LNG as it would expand their customers' base.

²⁴³ DG Competition, "Antitrust: Commission Sends Statement of Objections to Gazprom for Alleged Abuse of Dominance on Central and Eastern European Gas Supply Markets," April 22, 2015, http://europa.eu/rapid/press-release_IP-15-4828_en.htm.

²⁴⁴ European Commission, "First Gas Interconnector Poland – Lithuania Ends Energy Isolation of the Baltic States," October 15, 2015, http://europa.eu/rapid/press-release_IP-15-5844_en.htm.



Annex

Table 1: Contentious matters between the Russian and Lithuanian sides regarding the Lithuanian energy sector in the period 2010-2016

Initial complaints by time of submission	Further developments	Situation as of May 2016
On March 5, 2010, Gazprom filed claim with the International Court of Arbitration of the International Chamber of Commerce (Paris) challenging the introduction of the Lithuanian tariff regulation of the price of thermal energy of Kaunas CPH (KTE), the main owner of which was Gazprom.		Gazprom withdrew the claim against the Republic of Lithuania on KTE on March 25, 2013 after it sold 'KTE shares at a price which enabled to refund investments and make a reasonable profit' to Clement Power Venture Inc on 7 March 2013. 245
On 5 July 2010 Gazprom notified Lithuania about investment dispute with regards to the draft Natural Gas Law implementing the EU Third energy package.	A number of meetings were held with Gazprom in autumn of 2010. This notice later developed into an investment dispute under UNCITRAL arbitration rules. ²⁴⁶	
After Gazprom announced gas discounts for Latvia and Estonia and refused to lower gas prices to Lithuania due to the implementation of the EU Third energy package, in 2011 January Lithuania submitted the complaint to DG Competition due to alleged abuse by Gazprom of its dominant position.²⁴⁷	The complaint was followed in September 2011 by pan-Central Eastern European 'dawn raid's' by DG Competition. In September 2012, European Commission moved to a formal antitrust investigation into Gazprom's operations in the EU. In April 2015 the European Commission adopted a Statement of Objections in the course of the ongoing antitrust investigation of Gazprom activity in the EU. ²⁴⁸	In September 2015 Gazprom filed its settlement proposal to the European Commission. ²⁴⁹ The case was still ongoing.

²⁴⁵ Gazprom, "Gazprom Withdrawing Claim against Republic of Lithuania on Kauno Termofikacijos Elektrine," Company's website, *Gazprom*, (March 25, 2013), <http://www.gazprom.com/press/news/2013/march/article158805/>; Kauno Energija (2016), p. 13.

²⁴⁶ Ministry of Energy of the Republic of Lithuania, "Confirmation about the Notification by Gazprom about the Investment Dispute with regards to the Draft Natural Gas Law Implementing the EU Third Energy Package."

²⁴⁷ Ministry of Energy of the Republic of Lithuania, "The Ministry of Energy Submitted a Complaint to the EC about Gazprom's Abuse of the Monopoly Position/Energetikos Ministerija Pateikė Skundą Europos Komisijai Dėl „Gazprom“ Piktnaudžiavimo Dominuojančia Padėtimi."



<p>On March 25, 2011 Ministry of Energy of Lithuania brought a claim against Lietuvos Dujos before the Vilnius District Court to investigate operations of the company and to remove the general manager Viktoras Valentukevičius and two Gazprom appointed members of the board Valery Golubev and Kirill Seleznev, from their offices²⁵⁰. Ministry of Energy claimed that the abovementioned persons were not acting in the best interests of Lietuvos Dujos, when negotiating gas prices with Gazprom and were therefore breaching their fiduciary duties to Lietuvos Dujos.²⁵¹</p>	<p>In response, on June 13, 2011, Gazprom initiated an Emergency Arbitration in the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). Gazprom requested an emergency arbitrator to order the Lithuanian Ministry of Energy to suspend the investigation proceedings at the national court²⁵².</p> <p>Sole Emergency Arbitrator Albert van den Berg declined to grant the relief sought by Gazprom ‘mainly in light of the lack of urgency’.²⁵³</p>	<p>More detailed account of the events that followed is below in this table.</p>
<p>Subsequently, on August 29, 2011, Gazprom initiated an arbitration against the Lithuanian Republic before the Arbitration Institute of the SCC. Gazprom requested the arbitral tribunal to order the Ministry of Energy to withdraw the action which it had brought before the Lithuanian courts.²⁵⁴</p>	<p>The Arbitration institute of the SCC made the final award on July 31, 2012. The arbitrators decided that initiation and prosecution of the Lithuanian court proceedings could partially breach the arbitration agreement in the shareholders’ agreement of Lietuvos Dujos. The tribunal ordered the Ministry of Energy to withdraw some of the requests in Vilnius District Court, in particular the request requiring Lietuvos Dujos to enter into negotiations with Gazprom and to set “a fair and correct price for the purchase of” gas²⁵⁵.</p>	<p>After Lietuvos Energija acquired Lietuvos Dujos shares from EON and Gazprom, the persons in question were removed from their offices. In February 2016, Lietuvos Energija as a shareholder of Lietuvos Dujos proposed to settle the dispute with its subsidiary, including the persons Viktoras Valentukevičius, Valery Golubev and Kirill Seleznev.²⁵⁶</p>

²⁴⁸ Gazprom (2016).

²⁴⁹ Gazprom (2016).

²⁵⁰ Arbitration Institute of the Stockholm Chamber of Commerce (2012), p. 41.

²⁵¹ Wathelet (2014).

²⁵² Arbitration Institute of the Stockholm Chamber of Commerce (2012).

²⁵³ Arbitration Institute of the Stockholm Chamber of Commerce (2012).

²⁵⁴ Wathelet (2014).

²⁵⁵ Wathelet (2014).



	<p>On 3 September 2012, Vilnius District Court decided to appoint experts to conduct an investigation of the activities of Lietuvos Dujos. It also found that that action fell within its jurisdiction and could not be the subject of arbitration under Lithuanian law.²⁵⁷</p> <p>Lietuvos Dujos and Viktoras Valentukevičius, Valery Golubev and Kirill Seleznev brought an appeal against that decision before the Court of Appeal of Lithuania. Gazprom brought a separate action before that court, asking it to recognise and enforce the arbitral award in line with the 1958 New York Convention.</p> <p>On 17 December 2012, the Court of Appeal of Lithuania decided not to grant Gazprom's application. The Court of Appeal treated that the Arbitral Tribunal had no authority to determine a question already raised before and examined by the Vilnius District Court. In addition, on 21 February 2013, the Court of Appeal of Lithuania dismissed the appeal brought by Lietuvos Dujos and its board members.²⁵⁸</p>	
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²⁵⁶ Supreme Court of Lithuania (2016).

²⁵⁷ Wathelet (2014).

²⁵⁸ Wathelet (2014).



In January 2013, Gazprom challenged the decision of 17 December 2012 of the Court of Appeal in the Lithuanian Supreme Court and requested a new order for recognition and enforcement of the SSC arbitral award.²⁵⁹ Lietuvos Dujos and Viktoras Valentukevičius, Valery Golubev and Kirill Seleznev soon followed in a separate appeal to challenge the relevant decision of the Court of Appeal to Lithuanian Supreme Court.²⁶⁰

In October 2013, The Lithuanian Supreme Court referred to the European Court of Justice for preliminary ruling the questions whether a court should refuse recognition of arbitral award equivalent to anti-suit injunction, which could limit court's ability to decide whether it has jurisdiction in the national proceedings.²⁶¹ After receiving the preliminary ruling of ECJ in May 2015,²⁶² in October 2015, the Supreme Court of Lithuania has recognised and permitted enforcement of 31 July 2012 award of the arbitration tribunal of the Arbitration Institute of the SSC.²⁶³

²⁵⁹ Eglė Juršytė, "Gazprom' apskundė Teismo Sprendimą Nepripažinti Stokholmo Arbitražo Nutarimo," *Vz.lt*, January 14, 2013, <http://vz.lt/archive/article/2013/1/14/gazprom-apskunde-teismo-sprendima-nepripazinti-stokholmo-arbitrazo-nutarimo>.

²⁶⁰ Supreme Court of Lithuania (2016).

²⁶¹ Supreme Court of Lithuania (2013).

²⁶² European Court of Justice (2015).

²⁶³ Supreme Court of Lithuania (2015).



<p>On 1 March 2012 Gazprom initiated international investment arbitration against the Republic of Lithuania under UNCITRAL rules administered by the Permanent Court of Arbitration in the Hague. Gazprom requested to reverse the Natural Gas Law and challenged the ownership unbundling in Lietuvos Dujos, Lithuania's gas distribution company, in the context of an EU-mandated gas market reform.</p>		<p>Gazprom withdrew the complaint in April 2015, after selling the shares of unbundled Lietuvos Dujos.²⁶⁴</p>
<p>In July 2012, government-owned Lietuvos Energija submitted a complaint against Gazprom to a Lithuanian Competition Council claiming that Gazprom created obstacles for Lietuvos Energija to acquire alternative gas.</p>	<p>On 10 June 2014, the Competition Council of the Republic of Lithuania announced that it had imposed on Gazprom a fine of around EUR 35.6 million for breach of the conditions imposed on it when it acquired its shareholding in Lietuvos Dujos.²⁶⁵</p> <p>Gazprom challenged the decision in Vilnius Regional Administrative Court, which on 09 November 2015 upheld the decision of the Lithuanian Competition Council and ordered Gazprom to pay the fine.²⁶⁶</p> <p>On 23 November 2015, Gazprom challenged the Vilnius Regional Administrative Court decision about the 36 million euros fine to the Supreme Administrative Court of Lithuania.²⁶⁷</p>	<p>The case was still ongoing.</p>

²⁶⁴ Clemmie Spalton, "Gazprom Drops Treaty Claim against Lithuania - News - Arbitration News, Features and Reviews," *Global Arbitration Review*, April 9, 2015, <http://globalarbitrationreview.com/news/article/33703/gazprom-drops-treaty-claim-against-lithuania/>.

²⁶⁵ Competition Council of the Republic of Lithuania (2014).

²⁶⁶ Vilnius Regional Administrative Court (2015).

²⁶⁷ BNS, "Gazprom challenged the courts decision about the 36 million euros fine/„Gazprom“ apskundė teismo sprendimą dėl 36 mln. eurų baudos."



<p>On 3 October 2012, Republic of Lithuania filled a claim against Gazprom (approx. value 1.5 billion EUR) before the Arbitration Institute of the SCC claiming Gazprom had breached Privatization Agreement and had failed to supply gas to Lithuania at fair prices taking into account the Lithuanian energy market between 2004 and 2012.</p>		<p>On 22 June 2016, it was announced that Lithuania lost its case in the Arbitration institute of the SCC.²⁶⁸</p>
<p>On 8 August 2012, Lithuanian District Heating Association submitted complaint to the European Commission against the provisions in the LNG Law of June 2012 that required all the importers of gas to import at least 25% via the terminal²⁶⁹. At a similar time, the Lithuanian producer of fertilisers Achema also complained to the Commission challenging the 25% rule.²⁷⁰</p> <p>In addition, on 28 November 2012, the Lithuanian Gas Association, registered at the address of Lietuvos Dujos, filed a complaint to Commission’s DG Competition arguing that the LNG Terminal in Klaipėda would be receiving illegal and incompatible State aid.²⁷¹</p>	<p>The Commission Started a pilot procedure²⁷² after the complaints regarding the 25% requirement. With regards, to the state aid question to Klaipėda LNG, after also receiving an official notification about the state aid on 28 October 2013 from Lithuania, DG Competition started the procedure to assess the state aid.</p>	<p>In November 2013 DG COMP concluded that the state guarantee and the LNG supplement, and a special levy imposed on users of the transmission system, were compatible with the internal market.²⁷³ The pilot procedure lost its relevance in 2013-2014 when the Parliament cancelled the ‘25% rule’.²⁷⁴</p>

²⁶⁸ Reuters News, “Lithuania Loses Case against Gazprom at Stockholm Arbitration Court | Agricultural Commodities | Reuters.”

²⁶⁹ Lithuanian District Heating Association (2012).

²⁷⁰ Juršytė, “Achema’s Protest against the LNG Moved to Brussels/Achemos’ protestas Dėl SkGD Persikėlė | Briuselj.”

²⁷¹ European Commission (2013b), p. 1.

²⁷² Juršytė, “Achema’s Protest against the LNG Moved to Brussels/Achemos’ protestas Dėl SkGD Persikėlė | Briuselj.”

²⁷³ European Commission (2013b), p. 36.

²⁷⁴ Government of the Republic of Lithuania (2013); Seimas of the Republic of Lithuania (2013b); Homeland Union (2016).



<p>On 29 October 2012, a group of members of the Parliament, many of whom were Social Democrats submitted a petition to the Constitutional Court of Lithuania, requesting an investigation into whether certain articles of the Law on LNG did not violate the Constitution.²⁷⁵</p>	<p>In addition to the petition by a group of members of the Parliament, in 2014, the Vilnius Regional Administrative Court and Court of Appeal of Lithuania, also submitted petitions requesting an investigation into whether certain aspects of the Law on LNG were not in conflict with the Constitution of the Republic of Lithuania. The request from the Vilnius Regional Administrative Court came after its investigation of Achema's complaint submitted on 19 November 2012.²⁷⁶</p> <p>The Court Constitutional Court joined all three petitions into one case.</p>	<p>On 03 April 2015, the Lithuanian Constitutional Court ruled that the Law on LNG of 2012, taking account its changes later on, did not violate the Constitution²⁷⁷.</p>
<p>In around 2013 Russia warned Lithuania that it might initiate a separate investment arbitration against Lithuania regarding ownership unbundling in the gas sector. The notice was based on the same Lithuania - Russian Federation Bilateral investment treaty of 1999 as Gazprom's investment arbitration.²⁷⁸</p>		<p>The warning was never executed.</p>

²⁷⁵ Group of Parliament Members (2012).

²⁷⁶ Amber Grid (2015); Vilnius Regional Administrative Court (2014).

²⁷⁷ Constitutional Court of The Republic of Lithuania, "Court News - Constitutional Court of The Republic of Lithuania," *Court News - Constitutional Court of The Republic of Lithuania*, April 3, 2015, <http://www.lrkt.lt/en/news/court-news/the-provisions-of-the-law-on-the-liquefied-natural-gas-terminal-and-the-government-resolution-implementing-it-ruled-not-in-conflict-with-the-constitution/388>; Constitutional Court of The Republic of Lithuania, "Decision On The Petition Of A Group Of Members Of The Seimas Of The Republic Of Lithuania, The Petitioner, Requesting An Investigation Into The Compliance Of Paragraph 2 Of Article 5 The Republic Of Lithuania's Law On The Liquefied Natural Gas Terminal With The Constitution Of The Republic Of Lithuania," April 15, 2015, http://www.lrkt.lt/data/public/uploads/2015/10/2015-04-15_kt12-s6_decision.pdf.

²⁷⁸ Former High-level Official of the Ministry of Energy after the 2012 Elections, Natural gas sector reform in Lithuania (in Lithuanian); Lithuanian lawyer that worked with the case, Interview about Implementation of the Third Energy Package in Lithuania (in Lithuanian).



<p>In January 2014, at a shareholders' meeting of Lietuvos Dujos, the Ministry of Energy of Lithuania and E.ON, which, combined, held a majority of the equity interests in Lietuvos Dujos, voted in favour of initiating arbitration proceedings against Gazprom to demand a contractual price adjustment for natural gas supplied to Lietuvos Dujos.</p>	<p>In May 2014, days before EON sold its shares, Lietuvos Dujos signed a supplement to its gas supply contract with Gazprom granting Lietuvos Dujos a price discount and an agreement waiving all existing or potential claims for retroactive price revision on the ground of any actual or legal circumstances which occurred in periods preceding January 1, 2013. Lietuvos Dujos also admitted that, upon conclusion of these documents, they consider the pricing issue settled and will not claim any price revision relating to the aforementioned periods in the future.²⁷⁹</p>	<p>Lietuvos Dujos ceased preparations for arbitration proceedings.²⁸⁰</p>
<p>On 30 April 2014, Russia asked the World Trade Organisation (WTO) for consultations with the EU on its Third Energy Package.²⁸¹</p>		<p>On 20 July 2015, the WTO's dispute settlement body (DSB) decided to set up a panel to rule on Russia's complaint against the rules of the EU's Third Energy Package. The dispute was still ongoing.</p>

²⁷⁹ Gazprom (2014), p. 126.

²⁸⁰ Gazprom (2014), p. 126.

²⁸¹ Agence Europe, "Russia Refers EU's Third Energy Package to WTO."



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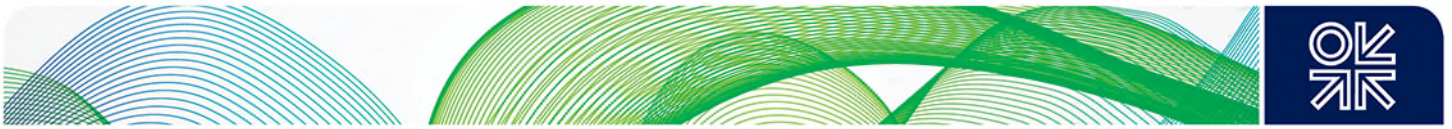
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