

Reinforcing EU responsible global leadership.

Promoting EU values for a rules-based multilateral world.

Promoting EU values and the weaponisation of energy. The case of EU international energy trade with Azerbaijan.

Introduction

The process of European integration ensued as a direct consequence of the profound shock induced by the atrocities witnessed during World War II. Therefore, consecutive generations of visionaries holding the pen in writing European history held the fundamental rights of citizens in high regard (Vos, 2021).

Article 3(5) of the Treaty on the European Union (TEU) specifies and concretises the foundational values of the European Union (EU):

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

In addition, the EU mentions its fundamental principles in article 21(1) TEU:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Both articles underline the intention of the EU to proactively advance fundamental rights such as: peace, sustainable development, free trade, protection of human rights, (art 3(5) TEU). And: democracy, the rule of law fundamental freedoms, and observance of international law (art 21(1) TEU). Both articles mention the United Nations Charter as a reference for fundamental values. These articles in the TFEU provide a legal obligation for the EU to 'uphold and promote' the values provided by article 3(5) TEU and article 21(1) in its foreign and trade policies.

This paper delves deeper into one aspect of the EU relations in the wider world: energy relations. Does the EU still uphold and promote the values mentioned above in the trade of energy resources with third countries in a hostile geopolitical environment? One could argue at first thought that some energy trade partners of the EU, such as Norway, the United States, and the United Kingdom, share its values, while others, such as Russia, Qatar, and Algeria, are less inclined to grant their citizens EU-like fundamental rights. The interconnection between energy relations and fundamental rights became evident in the aftermath of the Russian invasion of Ukraine, compounded by the ensuing energy crisis triggered by sanctions regimes and speculation on the energy market. Energy became 'geopolitised', concepts such as 'state energy power', and 'weaponisation of energy' emerged in academic and journalistic debates (Balmaceda, 2021).

Fundamental rights were mobilised to justify the decoupling of EU-Russo energy trade, accompanied by twelve packages of sanctions against Russia. While one could argue that these sanctions and the pursuit of energy relations diversification are primarily geopolitical in nature, the events in Bucha have revitalized support for Ukraine and underscored the significance of the fundamental rights aspect (Schipani, Reed, Foy and Pop, April 4, 2022).

But do the alternative trade partners uphold the values so precious for the EU? Do EU values still outweigh industry interest and the prosperity of EU citizens when they are at stake?

This paper first discusses the competences that the EU has in the energy sector. Secondly, it will delve deeper into the EU-Azerbaijan trade relations. The third part assesses the research question based on the Azeri case.

EU legal framework for Trade and Energy

The competences that the member states conferred to the EU-level are written in article 194 in the Treaty on the Functioning of the European Union (TFEU).

Article 194(1) TFEU stipulates that the EU has an energy policy to:

‘(a) ensure the functioning of the energy market; (b) ensure the security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks,’

But also stating that:

‘Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c) TFEU.’

These provisions underline the complexity of competences in the energy sector. While the EU holds exclusive competence over trade, member states retain some sovereignty over certain aspects of energy policy, including control over the general structure of their energy supply.

Talus and Aalto (2017) examined the competences of the EU. The Treaty of Lisbon incorporated the aforementioned energy aspects into the shared competence portfolio of the EU. The 'spirit of solidarity' clause underscores the interdependence of the member states' energy markets. While this clause serves as a corrective mechanism for the flaws in European energy markets, member states retain sovereignty over taxation, energy resource exploitation, and the selection of energy mixes. The Commission is responsible for overseeing the gradual liberalization of energy markets, monitoring national energy strategies, and coordinating energy policies among EU member States. The competences are structured in accordance with the ordinary legislative procedure, wherein the European Parliament and the Council make decisions through the community method decision-making procedure based on proposals from the Commission, all subject to judicial review by the Court of Justice (Talus and Aalto, 2014).

Bocquillon and Maltby (2020) describe the EU's competences on energy as 'embedded governmentality', where member states reinforce cooperation without delegating authority to supranational institutions, retaining control over energy policies through intergovernmental institutions such as the European Council and the Council.

The Commission is responsible for the internal energy market, clean energy, and the security of energy supplies. The European Council and the Council decide on key energy issues such as climate and energy targets. The precise distribution of competences remains unclear, neither the literature nor the European online sources provide a clear-cut answer.. Formal and informal divisions of labour are unstable and contested (Bocquillon and Maltby, 2020).

Goldthau and Sitter (2020) examine the two clashing factors in the energy field: solidarity versus sovereignty. The outing of this fault line between these two principles lies in the divergences in how member states perceive energy. Northern and Western Member States are more likely to be market-oriented in energy and their energy policies towards Russia, while Southern and Eastern Member States have a more geostrategic vision of the role of the state in internal and external energy policies.

Besides the complexity of competences and sovereignty reflexes in strategic sectors such as energy, a schism emerges between a EU declaratory foreign policy of promoting EU values, and an EU operational foreign policy, prioritising EU trade interests.

As the EU becomes increasingly reliant on imports from low-labour cost developing countries, European firms actively resist regulatory burdens that could raise their import costs. During trade negotiations with these countries, these firms oppose labour and environmental provisions that might increase their expenses. This dynamic weakens the possibility for the EU to promote and uphold its fundamental values through trade agreements. The EU's approach to uphold and promote fundamental values in trade agreements with developing countries is shaped by the domestic European political economy, particularly the interests of import-dependent firms (Poletti, Sicurelli, Yildirim, 2021).

The case of EU-Azerbaijan trade relations

In the aftermath of the Russian invasion of Ukraine and the ensuing energy crisis, the EU sought alternatives to address the gap in energy supplies created by drastically reducing its trade in energy resources with Russia. Diversification of energy resources emerged as a primary objective in response to a rapidly evolving geostrategic environment (European Commission, 2022).

Azerbaijan, situated in the South Caucasus region, possesses significant reserves of oil and gas, primarily located in the Caspian Sea. Given its proximity to the EU and existing gas transportation infrastructure, Azerbaijan stands poised to play a pivotal role in the EU's diversification strategy (Economist Intelligence Unit, 2023).



This pipeline network holds immense strategic significance, granting Turkey greater influence in European energy strategies, as transit countries receive remittances for gas transport

The general framework for EU-Azeri trade relations is established through a Partnership and Cooperation Agreement (PCA), which has been in force since 1999. Azerbaijan is also part of the European Neighbourhood Policy, aiming at closer trade and economic integration. The EU is the biggest trading partner for Azerbaijan, accounting for the majority of Azerbaijan's total trade (52%) (EUR-Lex. Document nr : 01999A0917(01)-20091101).

The 2022 Joint Staff Working Document on the Cooperation Implementation Report on Azerbaijan brought some serious violations of fundamental rights to light, such as restrictions on the freedom of assembly, association and expression; no guarantee of press freedom; repression of political opposition activists, political prisoners; torture, no protection of national minorities; no recognition of LGBTIQ rights,

and no major developments regarding children's rights. It is important to underline that these assessments originate from European institutions themselves, indicating that human rights issues are well-known within European circles (European Commission, 2022).

The case of Nagorno Karabakh (Artsakh)

Nagorno-Karabakh, located in the South Caucasus region, is a disputed territory primarily inhabited by ethnic Armenians. Between 1994 and 2023, it was a de facto independent state ruled by an ethnic Armenian government, supported by Armenia, but not recognised by any UN member, including Armenia. De jure, it belongs to the Azerbaijani territory.

Russia plays a significant role in the conflict. The historic roots of the conflict lie, on the one hand in ethnic policies that employed a divide and rule strategy among peoples of different ethnicities within the Soviet Union. On the other hand, the dissolution of the Soviet Union led to various nationalist uprisings in the newly independent states.

After the dissolution of the Soviet Union, Russia profiled itself as leading mediator. Armenia is a member of the Common Security Treaty Organisation (CSTO), yet it did not receive substantial aid from Russia, whether politically or military. As Nagorno Karabakh is legally recognised as part of Azerbaijan, Russia did not invoke the military mutual assistance clause for Armenia.

In the fall of 2023, Azerbaijan, bolstered by its economic and military strength, regained territorial control over the entire region, effectively ending the ethnic Armenian self-rule in Nagorno Karabakh. Turkish support for Azerbaijan played a crucial role in this outcome.

Source: Yemelianova, 2023

The trade relations between the EU and Azerbaijan cannot be decoupled from the events in Nagorno Karabakh. The initial plans to double the gas flows from the Azerbaijan to the EU, are on hold, primarily due to uncertainty of whether the EU has a market for the gas in the longer term. France, supporting Armenia because of the large Armenian diaspora, warned Azerbaijan to not threaten the borders of Armenia. The European Parliament also remarked concerns, stating that what happens in Nagorno Karabakh has major implications for the EU-Azeri relations (O'Byrne, 2023).

An EU official clarified that the EU does not exercise direct oversight or control over the allocation of trade revenues accruing to Azerbaijan from lawful commercial transactions. This notably applies to the oil and gas sector involving EU member states. This statement underscores the principle of non-interference in the internal financial affairs of sovereign states engaged in legitimate economic activities, while also reflecting the complexities inherent in balancing economic interests with concerns related to conflict resolution and human rights considerations within the realm of international diplomacy (Taylor and Nikolov, 2023)

This contradicts the content of the EU-Azeri PCA's preamble:

CONVINCED of the paramount importance of the rule of law and respect for human rights, particularly those of persons belonging to minorities, the establishment of a multiparty system with free and democratic elections and economic liberalisation aimed at setting up a market economy,

The case of Nagorno Karabakh alone contradicts many of these values mentioned in the preamble. The ethnic Armenian exodus after Azerbaijan restored its territorial control over Nagorno Karabakh by using military force, resulted in allegations of deportation, forcible transfer and even crimes against humanity.

The fundamental values clauses are not limited to the preamble. Article 2 states:

Article 2

Respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute essential elements of partnership and of this Agreement.

This passage is thus a conditionality clause in the PCA. As EU partners do not like the term conditionality, the EU often uses 'essential elements. Despite the declarational character of using fundamental values through a conditionality clause to promote EU values, the EU lacks effective instruments and political courage to suspend trade agreements because of domestic violations of human rights in the partner country (Keukeleire and Delreux, 2022).

Conclusion

The EU effectively mobilised human rights violations to justify its termination of energy trade with Russia after the invasion of Ukraine and the associated human rights violations. Moral and geopolitical values overcame economic interests of many industries.

To sustain the European economy, the EU initiated negotiations for trade agreements with other energy-rich countries. In the case of Azerbaijan, the geopolitical and economic interests of the EU prevailed over the EU's legal obligation to 'uphold and promote its values and interests', despite embracing fundamental rights in the trade agreement.

The EU thus conduct a declarational foreign and trade policy, having no real leverage on trade partners to uphold and promote the EU values when geopolitical and economic interests are at stake.

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