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The EU's Promotion of Arctic Resources

Does the EU Meet its Policy Objective of "Promoting Sustainable Use of Arctic Resources"? An Analysis from the Viewpoint of Arctic Energy Resources

Antje Neumann and Kamrul Hossain**

The EU started to develop its own Arctic policy in 2008. One of the three main objectives of this policy is the promotion of sustainable use of Arctic resources. "Sustainability" was also a focus of the 2011 resolution of the European Parliament as a guiding principle in developing European policies toward the Arctic. Against this background, this article investigates the question of whether the EU meets its respective objective – sustainability – in regard to the development of Arctic hydrocarbon resources. The article contrasts the development of the EU's overall policy toward Arctic mineral resources with specific EU measures and examines the EU's capacity to influence sustainable Arctic hydrocarbon resource development. The article also elaborates on specific questions related to the EU's energy policy and the development of Arctic hydrocarbon resources in recent years as well as on the EU's dependency on oil and gas imports and respective tendencies to conclude on the aforementioned questions.

I. Introduction

The European Union's (EU's) policy toward the Arctic is aimed at three major objectives: protection and preservation of the Arctic in unison with its population, sustainable utilization of its resources, and multi-lateral engagement in Arctic governance. Although not directly geographically linked to the Arctic Ocean, the EU has strong political and economic ties throughout the membership and other agreements' association to a number of Arctic states. Especially in terms of its energy demand, the Arctic plays an increasingly important role in the EU. According to prognoses by the U.S. Geological Survey (USGS) of 2008, the region holds around one quarter of the world's undiscovered hydrocarbon resources. Presently, Russia and Norway already supply substantial amounts of the EU's primary energy consumptions. Since the overall demand is expected to further increase, and security conflicts in the oil-rich Middle East are expected to prevail, a stable

supply is an increasingly important factor for the European energy market. Against this background, Arctic energy resources are also of strategic significance for the EU.

In addition to the Arctic issues mentioned above, combating climate change is another important policy issue for the EU. Internally, its agenda is set on the 20-20-20 goals – comprising the reduction of greenhouse gas emissions and the improvement in energy efficiency and share for renewables to respective rates – while, externally, the EU has played a key role in international negotiations on climate change since the subject appeared on the political agenda. At the same time, climate change is one of the most pressing topics in the Arctic. The temperature increase has been recorded two to three times higher there than in the rest of the world, which results in rapid melting of sea ice. And although these developments possibly allow for easier access and passage opportunities in the future, resource activities bear a heightened risk for the fragile environment with its highly sensitive ecosystems. Oil exploration and exploitation, especially, pose severe threats, with the possibility of accidents that can result in oil spills and other serious consequences.

The EU, which began to develop its own Arctic policy in 2008, has signalled that it has a clear interest in both – tapping the region's natural resources while protecting the Arctic environment. With the European Parliament's resolution entitled "A sustainable EU policy for the High North," released in January 2011, the focus has been on sustainability, which should apply as a guiding principle in developing European policies toward the Arctic. This paper focuses on the EU's approach to sustainability and environmental protection, as one of the constituent parts of sustainable development, in using Arctic natural resources.¹ The paper will not assess sustainability measures and environmental protection efforts of the EU as such, except for those that are connected with the exploration and exploitation of Arctic hydrocarbon resources. In this framework, the paper deals with the central question of whether the EU's efforts meet its respective policy objective that resource exploitation in the Arctic is carried out in a sustainable way and in full respect of strict environmental standards, taking into account the particular vulnerability of this region.

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¹ Principle 4 of the Rio Declaration on Environment and Development (1992) states: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

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Before dealing with this question in more detail, the article provides a general discussion of the EU's energy policy, with an emphasis on the interrelationship between energy policy and climate change mitigation targets. Section three gives an overview of the development of Arctic hydrocarbon resources in recent years. In section four, the EU's dependency on oil and gas imports and respective tendencies are explored. Section five addresses EU's environmental responsibility while investigating Arctic mineral resource activities. In this context, an introduction of the legal basis of European policies toward the Arctic, with an emphasis on sustainability and resource policy, is followed by contrasting the development of the EU's general policy toward Arctic mineral resources with specific EU measures. Finally, the article concludes with an overall assessment of the EU's efforts toward sustainability in regard to Arctic energy resource development by pointing out the achieved progress as well as the remaining deficiencies.

II. EU Energy Policy – a Brief Overview

Sustainability is one of the three pillars of the overall EU energy policy. The EU relies heavily on the Arctic's hydrocarbon resources, in particular on that of Russia and Norway, as is shown elsewhere in this article. Sustainable Arctic hydrocarbon developments thus necessarily have an effect on the EU in terms of its commitment to the promotion of sustainable resources practices both within the EU and beyond. A brief account of EU's energy policy is worth mentioning here to show how external resource extraction may impact EU policy objectives as a whole, where in addition to sustainability, an integrated aspect of competitiveness and security of supplies – the other two pillars – constitute the EU's energy policy. Even though the EU so far does not have any single document encompassing all aspects of energy components, the Lisbon Treaty² has provided a relatively stronger legal basis for a more coherent energy policy. The Lisbon Treaty explicitly lists energy as a “shared competence between the Union and its Member States” and introduces the “energy chapter,” recognising the powers of the EU to develop a harmonised energy policy applicable to all members. The idea behind introducing the energy chapter is to develop more strategic policy goals and to harmonize the fragmented energy policy for the EU as a whole. By virtue of Article 194 of the Treaty on the Functioning of the European Union (TFEU), the EU energy policy should not only meet the goals of sustainability, competitiveness, and security of supplies, but it should also integrate preservation and the improvement of the environment.³ As a result, the legal basis for an energy policy under Article 194 is not only to integrate environmental considerations but also to adopt a proactive and effective role to preserve

and promote the environment.⁴

The liberalization of the European energy market with an EU-wide emphasis on energy savings and the development of renewable resources has aimed at meeting the EU's goal of climate change mitigation at the European policy level.⁵ However, the biggest challenge for the EU is to establish an inter-linkage between energy efficiency and its climate change ambition. Here lies the paradoxical premise: while the EU's demand for the import of fossil fuel is gradually on the increase, the EU has made an ambitious emission reduction commitment to itself by introducing a policy to promote emission reduction goals beyond the EU.⁶ However, consumption of fossil fuels and reduction of greenhouse gas (GHG) emissions cannot go hand in hand, the context which has gained momentum since 2007, with the EU's renewed commitment to the reduction of GHG emissions from all energy intensive projects.⁷ The EU's 1997 Kyoto Protocol commitment to reduce 8% of GHG emissions

² See Treaty of Lisbon Tackling European in the 21st Century (Jun 09 2010), available at http://europa.eu/libson_treaty/glance/index_en.htm. (The Treaty of Lisbon entered into force on 1 December 2009. The Treaty amended the current EU and EC Treaties without replacing them. The Treaty provides the EU with the legal framework and tools necessary to meet future challenges and to respond to its citizens' demands. With a view to creating a more efficient Europe, the Treaty emphasized the improvement upon the lives of Europeans by acting in policy areas, such as in the energy sector.)

³ See Foundation Robert Schuman, *The Lisbon Treaty 10 Easy to Read Fact Sheet* (Jun. 22, 2010), available at <http://www.robert-schuman.eu/en/dossiers-pedagogiques/traite-lisbonne/10fiches.pdf>. <http://www.robert-schuman.eu/doc/divers/lisbonne/en/10fiches.pdf>.

⁴ Article 11 of the TFEU sets out the obligation concerning incorporation of environmental consideration in the making of energy policy; whereas article 194 went a step further requiring measures to preserve and improve the environment.

⁵ European Commission Communication COM/2011/0885 final of 15 December 2011 on “Energy Roadmap 2050”.

⁶ Kamrul Hossain, “Looking at the Arctic? The EU Energy Policy, Dependence and Environmental Responsibility toward Arctic Hydrocarbons”, 2 *UPES Law Review* (2014) (forthcoming).

⁷ See Danielle Devogelaer & Dominique Gusbin, *EU Energy/Climate Package and Energy Supply & Security*, Belgium Jun. 16, 2010, available at <http://www.plan.be/admin/uploaded/201001051126560.wp200916.pdf>. (The EU agreed to reduce its greenhouse gas emission by 20% by 2020 compared with its 1990 levels and an objective for a 30% reduction by 2020 subject to the conclusion of a comprehensive international climate change agreement; a mandatory 20% share of renewables in gross final energy demand by 2020 for the EU as a whole including 10% share of renewables in transport for each Member State; and an improvement of energy efficiency by 20% compared with baseline levels by 2020.

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by 2012 included energy as one of the six identified industry sectors, from which it aimed to limit emissions of carbon dioxide.⁸ Before the new members were admitted in 2004, the 15 EU countries (EU-15) were well on track to meet this target.⁹ The majority of the new members that have joined since 2004 have set a target between 6% and 8%, with the exception of Croatia, which has set a target of 5% and is on course to achieve this goal.¹⁰ In several of its policy documents beginning in 2006, the EU has agreed to increase emission reduction commitments, energy savings potential, as well as the production of renewable energy by adopting various measures and action plans. The overall goal of the EU has been to achieve the so-called 20-20-20 goals – a 20% reduction in GHG compared to the 1990 level, a 20% increase in renewables, and a 20% increase in energy efficiency (savings) by 2020.

To achieve the aforementioned goals, the EU adopted a series of policy documents, which include a 2006 Green Paper;¹¹ a 2007 document on energy policy for Europe;¹² the EU Commission's communication entitled "Towards a European Strategic Energy Technology Plan" (SET Plan) of 2007;¹³ the integrated maritime policy of 2007,¹⁴ having an energy component as a separate document, entitled "Energy Policy and Maritime Policy: Ensuring a Better Fit";¹⁵ the Commission's "Second Strategic Energy Review" of November 2008;¹⁶ the "Climate and Energy Package" of the EU Parliament and the Council of 2008;¹⁷ and the Commission's communication on options to go beyond 20% GHG reduction of 2010.¹⁸ In 2010, the Commission adopted a communication on energy strategy entitled "Energy 2020,"¹⁹ setting the basis for EU's existing energy policy. The strategy incorporated smart, sustainable, and inclusive growth in the energy sector, upholding the EU's climate goals, which, among the others, focused on strengthening external dimensions of the EU energy market. The Energy Roadmap 2050 was adopted in 2011 to set climate policy goals, offering an analysis of the long-term energy policy orientations with a view to achieving a low carbon economy. In March 2013, based on the energy 2020 strategy as well as on Roadmap 2050, the EU Commission adopted yet another Green Paper entitled "A 2030 Framework for Climate and Energy Policies,"²⁰ followed by a policy framework in January 2014 entitled "A Policy Framework for Climate and Energy in the Period from 2020 to 2030."²¹ The EU leaders agreed in March 2014 to decide on the framework in October 2014. The "Policy Framework" reflects a number of important issues including binding GHG reduction targets, binding renewable energy targets, energy efficiency, reform of the EU emission trading system (ETS), affordability and energy security, and new governance systems in the energy sector, adopting a common approach in national plans for energy security and sustainability.²²

These documents present EU's visions, its strategy

⁸ See James Gubb, *EU Environmental Policy* (Jun. 11, 2010), available at <http://www.civitas.org.uk/eufacts/download/ENV.1.Environment%20Policy.pdf>. (Other industry sectors are: steel, cement, glass, brick-making, and paper/cardboard production. The 2008 EU Climate Change package added aircraft emissions to the ETS (from 2012), and reasserted the EU's commitment to reduce CO₂ emissions through Carbon Capture and Storage. Then again in 2008, the EU reasserted a commitment to reduce CO₂ from new cars by 2010, and to fine manufacturers for each gram of CO₂ they produce over the target (€20 in 2012, €95 in 2015).

⁹ See European Commission, *What is the EU doing about climate change?* (Dec. 2013), available at <http://ec.europa.eu/clima/policies/brief/eu/>.

¹⁰ *Id.*

¹¹ The Green Paper: A European Strategy for Sustainable, Competitive and Secure Energy, available at http://europa.eu/documents/comm/green_papers/pdf/com2006_105_en.pdf

¹² See Council of the European Union, "An Energy Policy for Europe" (Jun. 11, 2010), available at <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%205282%202007%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F07%2Fst05%2Fst05282.en07.pdf>.

¹³ See Council of the European Union, *Towards a European Strategic Energy Technology Plan*, (Jun. 22, 2010), available at <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%205240%202007%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F07%2Fst05%2Fst05240.en07.pdf>.

¹⁴ See Council of the European Union, *An Integrated Maritime Policy for the European Union*, (Jun. 21, 2010), available at <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2014631%202007%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F07%2Fst14%2Fst14631.en07.pdf>.

¹⁵ European Commission Staff Working Document SEC (2007) 1283 of 10 October 2010 on "Energy Policy and Maritime Policy: Ensuring a Better Fit".

¹⁶ European Commission Communication COM/2008/0781 of 13 November 2008 on "Second Strategic Energy Review - An EU Energy Security and Solidarity Action Plan".

¹⁷ Council of the European Union 17215/08 of 12 December 2008 on "Energy and climate package - elements of the final compromise agreed by the European Council".

¹⁸ European Commission Communication COM/2010/0265 final of 26 May 2010 on "Analysis of options to move beyond 20% greenhouse gas emission reductions and assessing the risk of carbon leakage".

¹⁹ European Commission Communication COM/2010/639 final of 10 November 2010 on "Energy 2020 - A strategy for competitive, sustainable and secure energy".

²⁰ European Commission Green Paper COM/2013/0169 final of 27 March 2013 on "A 2030 framework for climate and energy policies".

²¹ European Commission Communication COM/2014/015 final of 22 January 2014 on "A policy framework for climate and energy in the period from 2020 to 2030".

²² See European Commission Press Release IP/14/54 of 22 January 2014 on "2030 climate and energy goals for a competitive, secure and low-carbon EU economy", available at http://europa.eu/rapid/press-release_IP-14-54_en.htm.

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and policy for moving forward to achieve its set goals, as well as its renewed commitments for further progress for an integrated EU energy policy with a view to achieving clean, efficient, and low-carbon energy. Concerning its ambitious goal of reduction of GHG emissions, the EU's renewed commitment suggests yet another increase in emission reduction: a 40% cut from the 1990 level by 2030 (which means going beyond the EU's earlier commitment of a 20% reduction by 2020). If this plan goes accordingly, the EU is expected to be on track to fulfil its emissions reduction of 80% by 2050. In addition, the policy framework also suggests emissions reductions from the sectors covered by the EU ETS by 43% as compared to the 2005 level, while the target for emission reductions from outside the EU ETS is planned to be 30% below the 2005 level.²³

The EU policy documents constantly emphasized the diversification of energy supply by introducing more carbon-free energy technology.²⁴ The development of wind power, solar power (thermal, photovoltaic, and concentrated), hydropower, tidal power, geothermal energy, and second generation biomass has been routinely encouraged and assessed. This new generation of energy sources is expected to enable the EU not only to meet its increased energy demands but also to contribute to the reduction of GHG emissions of between 60 and 70% by 2050, which eventually will be a step toward fulfilling the goals set by the "Roadmap 2050," that is, de-carbonization with 80%–95% emission cuts, compared to the 1990 levels.²⁵ The recent policy document also proposes an increase of 27% in the production of renewables by 2030 in EU's energy mix.²⁶ This increase furthermore motivates improvement in the EU's energy trade balance to achieve security of supply.²⁷ The policy documents also highlighted cross-sectorial aspects of energy components with various other policy areas, such as with maritime policy. Improvement of energy efficiency has also been argued from a standpoint of multiple energy usages, with particular emphasis on buildings and energy-intensive products. Solidarity among the EU member states has also been acknowledged to enhance energy efficiency and savings. The renewed target for energy efficiency is expected to be considered in the Energy Efficiency Directive, which will be concluded sometime in June 2014.

Despite the ambiguous policy objectives mentioned above, critical voices suggest that the EU energy policy, which has achieved a rather relatively stronger legal basis under the Lisbon Treaty; to a large extent, however, Treaty rules remains business as usual.²⁸ This is mainly due to member states' national competence over the energy mix, energy foreign policy, and the conditions for exploiting EU's energy resources individually.²⁹ This individual competence offers an obstacle in developing a common EU voice on energy issues.

The member states are nevertheless subject to

general obligations of sincere cooperation and competition, rules that apply to the import and transit of energy.³⁰ The Lisbon Treaty formalizes the shared ownership of the EU energy policy between the EU institutions and its member states.³¹ As the Treaty offers room to coordinate the "shared competence" of EU institutions and members, consensus can be achieved on the targeted goals followed by actions in the respective areas of energy practices within the EU.³² The Treaty also offers new means of external representation to further the Union's cooperation and dialogue with non-EU countries and regions, since the Union is looking at energy matters beyond the internal market. The Single Market Act II of 2012 is of importance here; it identified energy as one of the four drivers of growth. The Act aimed at improving the implementation and enforcement of internal market legislation, which proposed priority actions to make the application of the existing EU energy legislation more effective and make cross-border energy markets a reality, for which there is no alternative but to have a single set of energy policy for the EU as a whole, providing for its internal and external dimensions.

While the EU maintains close links to the Arctic, especially through political partnerships and economic cooperation, the Arctic nevertheless still primarily falls outside of its jurisdiction, in particular concerning the questions of offshore hydrocarbon practices or the energy supply from Arctic states other than its own. Thus, from a legal perspective, the Arctic as a region is particularly relevant to the EU's external policy areas. This relevance has been reflected in the EU's "Energy 2020 Strategy," mentioned above. Its fifth objective – *strengthening the external dimension of the EU energy market* – is of major relevance for the Arctic. The strategy calls for more effective coordination at the EU and member state level as well as for more consistency and mutual reinforcement of the external dimensions of the EU's energy policy with other

²³ *Supra*, note 22.

²⁴ European Commission Communication COM (2007) 723 final of 22 November 2007 on "A European strategic energy technology plan (SET Plan) – Towards a low carbon future".

²⁵ *Supra*, note 6.

²⁶ See *supra*, note 22.

²⁷ *Ibid.*

²⁸ Susanne Langsdorf, "Energy Roadmap 2050 – A history of EU energy policy, Green European Foundation" (2011) at 8 available at http://gef.eu/uploads/media/History_of_EU_energy_policy.pdf.

²⁹ *Ibid.* at 6.

³⁰ Jan Frederik Braun, "EU Energy Policy under the Treaty of Lisbon Rules between a new policy and business as usual", *Working Paper* No. 31 (2011), European Policy Institute Network (EPIN), at 2.

³¹ Susanne Langsdorf, *supra*, note 29 at 6.

³² *Ibid.* at 9.

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external activities of the EU, like that of development, trade, climate and biodiversity, enlargement, Common Foreign and Security Policy, and so forth. Thus, four actions are proposed, whereby Action 2 – the establishment of so-called privileged partnerships with key partners in supply and transit – becomes especially relevant in view of the Arctic region, with Russia and Norway as leading suppliers of crude oil and gas to the EU-27-market. A subsequent communication on international cooperation with external energy suppliers released in September 2011³³ takes up the emphasized objective. It proposes the following four priorities:

1. Building up the external dimension of our internal energy market;
2. Strengthening partnerships for secure, safe, sustainable and competitive energy;
3. Improving access to sustainable energy for developing countries; and
4. Better promoting EU policies beyond its borders.

Subsequent to this communication, in October 2012, the European Parliament and the Council adopted a “Decision on establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy.”³⁴ This decision – with the objective to increase transparency among the member states and ensure that EU internal market rules and energy security policy goals are respected in such agreements – came into force in November 2012.

III. Development of Arctic Hydrocarbon Resources

The Arctic is considered to be a “new frontier” for oil and gas reserves.³⁵ The region has attracted tremendous attention for its huge potential for hydrocarbon resources and its possible development, and this has become an emerging area of focus. The Arctic Climate Impact Assessment (ACIA) Report estimated that there are significant oil and gas reserves in the Arctic marine area and that most of these are located within the jurisdiction of Russia, with additional fields in Canada, Alaska (United States), Greenland (Denmark), and Norway.³⁶ The USGS found further evidence to this effect, first in 2008 and then again in 2010. The survey suggested that the area north of the Arctic Circle holds approximately 30% of the world’s undiscovered gas and 13% of its undiscovered oil and that most of these resources are present in less than 500 meters below sea level.³⁷ It has been further estimated that approximately 84% of the undiscovered oil and gas is located in the offshore Arctic, representing around 90 billion barrels of technically recoverable oil.³⁸ Although the Eurasian side of the Arctic has greater reserves of natural gas, the North American side is more oil-rich; it is estimated to contain approximately 65% of undiscovered Arctic oil

but only 26% of undiscovered Arctic natural gas.³⁹ It is presumed that the remainder of the resources is in the European Arctic, and these are primarily believed to be in the Russian Arctic. Interestingly, 97% of these resources are thought to be within the exclusive jurisdictions of the Arctic coastal states, in other words, within 200 nautical miles of the continental shelves, according to the USGS.⁴⁰ These estimates, however, are not yet confirmed with exact precision. Extreme climatic conditions, the presence of a thick ice sheet, and remoteness hinder appropriate assessments. Moreover, within the Russian Arctic shelves, exploration has so far been conducted rather poorly. Consequently, we say that the amount of resources currently believed to be available may have been either over or underestimated. Notwithstanding this, the likelihood of there being resource reserves in the Arctic shelves cannot be ignored.

Nevertheless, the point is that none of these resources has been previously tapped, due to harsh climate conditions, inadequate technology, and the presence of polar ice. Due to an estimated increase in the demand of global oil⁴¹ and, more so, of natural

³³ European Commission Communication COM/2011/539 final of 7 September 2011 on “On security of energy supply and international cooperation – ‘The EU Energy Policy: Engaging with Partners beyond Our Borders’”.

³⁴ European Parliament & Council of the European Union Decision No 994/2012/EU of 25 October 2012 on “Establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy”.

³⁵ See for example, <http://www.theguardian.com/environment/2011/jul/05/oil-supplies-arctic>.

³⁶ See ACIA, *a Warning Arctic: Arctic Climate Impact Assessment* (2004) 44, available at www.amap.no/documents/download/1057/. Also See Bruce C. Forbes and Florian Stamm, “Arctic Climate Change Discourse: the Contrasting Politics of Research Agendas in the West and Russia”, *Polar Research* (2009), 28.

³⁷ Gautier D. L. *et al.*, “Assessment of Undiscovered Oil and Gas in the Arctic”, 324 *Science* (2009), 1275.

³⁸ Bird, J. K. J., *et al* “USGS: Circum-Arctic Resource Appraisal: Estimates of undiscovered Oil and Gas North of the Arctic Circle” (2008), available at <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>.

³⁹ Nong Hong, “The energy factor in the Arctic dispute: A pathway to conflict or cooperation?” 5 *Journal of Energy Law and Business* (2012) available at http://www.nanhai.org.cn/include_lc/upload/UploadFiles/201212112191553324.pdf. (2012).

⁴⁰ “Kingdom of Denmark Strategy for the Arctic 2011 – 2020”, 14 (Aug. 2011) available at http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/mss-denmark_en.pdf.

⁴¹ The International Energy Agency projects in a current policy scenario as well as in a new policy scenario (with more oil use efficiency and switching to other fuels) an absolute global primary oil uses increase, even if the share of oil in total primary energy demand is expected to decrease.

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gas,⁴² it is believed that the expansion of hydrocarbon extraction in the Arctic is just a matter of time. In recent years, both energy industries and the Arctic states have found it to be of increasing interest to exploit oil and gas in the region. Indeed, in many areas within the circumpolar north, exploitation of oil and gas is already a major economic driver.⁴³ The exploitation of these resources increasingly becomes a reality as rapid sea ice melt results in greater accessibility to the offshore Arctic. In addition, other motivating factors, such as high oil prices in the world market, advancement of ship design technology and drilling equipment, and regional political stability of the Arctic, contribute to the increasing pace of regional hydrocarbon extraction.⁴⁴ Thus, current prognoses state that respective investments could reach \$100 billion or more over the next decade, mostly in the mineral sector.⁴⁵

However, Arctic offshore drilling is relatively more expensive, and the high cost of doing business in the area suggests that only the world's largest oil and gas companies will have the financial, technical, and managerial strength to accomplish the costly and time-consuming projects dictated by the Arctic conditions.⁴⁶ A short drilling season and possible effects on the Arctic's unique ecosystem also slacken the development of new fields. The Arctic climate and weather will apparently be less predictable as time goes by, as will the ice conditions in the Arctic Ocean. Although the long-term pattern is clear,⁴⁷ year to year variations in ice will be great, with some seasons being colder and having more ice than has been "normal" in recent years. Such conditions will have the effect of significantly limiting the possibilities of moving oil and gas operations farther out to sea, even if the ice edge retreats. The industries cannot count on areas that are ice free, and in the case of fixed installations, they will have to prepare for a situation in which the maximum extent of the ice does not differ much from that of today, although the ice will be thinner on average.⁴⁸ The Arctic development is, therefore, considered to be of greater risk from environmental perspectives. There are four main stages of hydrocarbon development: geological and geophysical survey, exploration, development and production, and decommissioning. Each of these stages also involves various activities along with associated environmental impacts,⁴⁹ the possible consequence of which is arguably greater if compared with other areas. Any accidental oil spills or spills occurred during the extraction process may have serious environmental consequences in the Arctic region. Moreover, from the perspective of oil and gas companies, the Arctic hydrocarbon exercise is still in its infancy, as costs for possible environmental mitigation, such as clean-up operations, are expensive, and the process is extremely difficult.

IV. EU-Import Rates and Tendencies

The EU is the world's second largest economy. It consumes one fifth of the world's energy, with few reserves of its own,⁵⁰ and its energy demand is ever-increasing. When counted together, the EU member states are the world's largest energy importer. The EU is currently importing about 55% of its energy supply. This comprises 84% oil and 64% natural gas.⁵¹ According to 2011 estimates, the EU's primary energy sources include 24% natural gas, 37% oil, 18% coal, and 12% nuclear.⁵² A major share of its primary

cont.

IEA, World Energy Outlook 102 (2011) available at http://www.iea.org/publications/freepublications/publication/WEO2011_WEB.pdf.

⁴² For natural gas the IEA expects an increase in demand as well as an increase in the share of the TPES in all scenarios. *Ibid* at 180.

⁴³ AMAP, Arctic Oil & Gas (2007), 1 and 17, available at <http://www.amap.no/documents/doc/arctic-oil-and-gas-2007/71>.

⁴⁴ This fear is because of the oil crisis the world faced in October 1973, when the Arab members of the petroleum producing countries announced a ban on oil shipment to the countries supporting Israel in 1973 Arab-Israel war. See "US Energy Information Administration", 25th Anniversary of the 1973 Oil Embargo, available at <http://www.eia.doe.gov/emeu/25opec/anniversary.html>. <http://www.eia.doe.gov/emeu/25opec/anniversary.html>.

⁴⁵ Chatham House (2012) "Arctic Opening: Opportunity and Risk in the High North", p. 18. Available at <http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/0412arctic.pdf>.

⁴⁶ Nong Hong, *supra* note 40, at 11-12.

⁴⁷ A recent study by the Arctic Monitoring and Assessment Program (AMAP) suggests that the Arctic Ocean will be seasonally ice-free during the summer within the next thirty to forty years. See AMAP, Snow, Water, Ice and Permafrost in the Arctic (SWIPA) (), available at <http://amap.no/swipa/SWIPA2011ExecutiveSummaryV2.pdf>.

⁴⁸ Svein Vigeland Røttem and Arild Moe, "Climate Change in the North and the Role Industry input to Strategic Impact Assessment Barents Region 2030" (2007), 15 available at <http://www.fni.no/doc&pdf/FNI-R0907.pdf>.

⁴⁹ Kristin Noelle Casper, "Oil and Gas Development in the Arctic: Softening of Ice Demands Hardening of International Law", *Natural Reserve Journal*, Vol. 49 (2009), 832 available at <http://lawlibrary.unm.edu/nrj/49/3-4/825-882.pdf>.

⁵⁰ European Commission, *The European Union explained Energy*, Directorate-General for Communication Publications (2012), p. 3.

⁵¹ European Commission, *Market Observatory for Energy*, Key Figures, June 2011 available at http://ec.europa.eu/energy/observatory/eu_27_info/doc/key_figures.pdf.

⁵² Michael Ratner *et al.*, "Europe's Energy Security: Options and Challenges to Natural Gas Supply Diversification", *Congressional Research Service* (2013) at 5, available at <http://www.fas.org/spp/crs/row/R42405.pdf>.

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energy supply comes from the Arctic, in particular, from Russia and Norway.⁵³ It has been estimated that the imports will grow by approximately 65–70% over the next 20 years.⁵⁴ Oil imports to the EU are from Russia/CIS (38%), which has been constantly increasing in the past few years, the Middle East (22%), Norway (15%), North America (14%), and other countries (11%), and clearly shows that a large share of EU consumption is from the Arctic states (Russia, Norway, and North America). According to recent estimates about 30% of the EU's total energy imports come from Russia, which is about 70% of Russia's exports.⁵⁵

The EU apparently relies constantly on the supply of natural gas from Russia. This is also because use of natural gas contributes relatively less to the emission of GHG than other sources, such as coal. To reach its ambitious targets to reduce carbon dioxide and greenhouse gas emissions, the import of natural gas has become a significant issue. It is expected that by 2030, the supply of natural gas in the EU's energy imports will increase to 30% from the present rate of 24%.⁵⁶ The Commission's forecast suggests an overall import of 80% natural gas demands by 2030, and this is, to a large extent, due to the fact that Germany committed to shutting down its nuclear power plants by 2022⁵⁷ and that some of the EU countries committed to impose possible prohibitions on shale gas development. As a result, there will be further pressure on the imports of natural gas.⁵⁸ Most of the EU's natural gas imports come from Norway and Russia, which accounted for 35% and 34% of the imports, respectively, in the year 2012. However, Russian natural gas in the EU market is expected to rise even further. Increasingly, Russian and European companies have been developing an extensive infrastructure to transport Russian gas to the European market making EU-Russia relations significant in terms of the natural gas supply.⁵⁹ Some of the major EU players, for example, Germany and Italy – the largest importers of Russian gas – have negotiated long-term deals with Russia.⁶⁰ It has been thus said that the energy resources of the Arctic could continue to constitute a strategic reserve for Europe's energy demands, even though there have been some discussions after the Ukrainian crisis that the EU will probably reduce the Russian energy supply, and the plan for alternative energy production from inside the EU should be developed.⁶¹ In the UK, for example, there is a major focus on the fracking of shale gas. However, it will probably take time to develop, and this is not an immediate option. Thus, the EU's dependence on the Russian supply will continue in the near future. Many believe, therefore, that no matter how successful the EU may be in identifying energy supply alternatives, its dependence on Russian energy is likely to continue.⁶²

V. The EU's Arctic Setting: Investigating Arctic Energy Resources vs. Sustainability

Against the above described background – the EU's dependency from energy imports to cover its growing demand and the increasing importance of the Arctic region in terms of mineral resource exploration and exploitation – the EU, on the one hand, has expressed its clear interests in tapping the region's resources. On the other hand, the EU is also keen to demonstrate leadership in environmental standards for extracting industries. In doing so, it has to face responsibility for the highly vulnerable Arctic environment while

⁵³ Since 2004, more than half of the EU-27's gross inland energy consumption was consumption supplied by net imports. Much of the energy for EU consumption comes from Russia. The EU is especially dependent on import of hard coal, lignite and crude oil. In 2007, almost one third (30.3 %) of the EU-27's imports of crude oil were from Russia; this was higher the rate than seven years earlier. Russia also became the principal supplier of hard coal, its share of EU-27 imports rising from 7.9 % in 2000 to 22.6 % by 2007. Almost two thirds (63.6 %) of the EU imports of natural gas in 2007 came from Russia, Norway or Algeria. A similar analysis shows that 64.5 % of EU imports of hard coal were from Russia, South Africa, Australia or Colombia, while 59.5 % of crude oil imports came from Russia, Norway, Libya or Saudi Arabia. The volume of imports from other countries than Russian and Norway remain relatively small. This was notably the case for crude oil imports from Libya and Kazakhstan, coal imports from Indonesia and Ukraine, or natural gas imports from Nigeria and Libya. See European Commission Eurostat, Energy Production and Imports (Aug. 2012) available at http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Energy_production_and_imports.

⁵⁴ Adele Airoldi, "The European Union and the Arctic Policies and Actions", *Nordic Council of Ministers* (2008), 76.

⁵⁵ More precisely, 88% of Russia's total oil exports, 70% of its gas exports and 50% of its coal exports. See "EU-Russia Energy Relations" available at http://ec.europa.eu/energy/international/bilateral_cooperation/russia/russia_en.htm.

⁵⁶ Eurogas, "Long Term Outlook for Gas Demand and Supply 2007-2030", June 5, 2010, p. 5, available at http://www.eurogas.org/uploaded/Eurogas%20LT%20Outlook%202007-2030_Final_251110.pdf.

⁵⁷ The German Parliament adopted its decision for a nuclear power phase-out until 2022 on 30 June 2011, available at <http://www.welt.de/politik/deutschland/article13460039/Bundestag-beschliesst-Atomusstieg-bis-2022.html>.

⁵⁸ See Michael Ratner *et al*, *supra*, note 53.

⁵⁹ See *ibid*.

⁶⁰ *Ibid*.

⁶¹ "Ukraine crisis sharpens focus on European shale gas", March 14 (2014), available at <http://www.reuters.com/article/2014/03/14/europe-shale-ukraine-idUSL6N0MB1WI20140314>.

⁶² See *supra*, note 53.

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investigating in the region's mineral resources. Before dealing with the question of responsibility in more detail, the general relationship of the EU toward the Arctic and the development of a respective policy in terms of energy resources are illustrated in the following.

5.1 The EU – an Arctic actor?

The Arctic is not a distinctive, uniquely defined region – neither geographically nor economically nor legally. The same applies to European-Arctic relations: Taking the eight Arctic states as a point of departure, three of them are EU member states – Denmark (Greenland), Finland, and Sweden. However, as Greenland and the Faroe Islands do not belong to the EU, the EU itself has no coastline to the Arctic marine area. On the other hand, Iceland and Norway, as Arctic states, belong to the European Economic Area (EEA) and are therefore considerably impacted by EU law. Furthermore, Russia is the main partner of the EU within the Northern Dimension (ND) initiative, while Canada and the United States are strategic partners of the EU interlinked with each other by several bilateral agreements.

Notwithstanding these links between the EU and the eight Arctic states, EU law directly applies only to three of them, and in the case of Denmark, this application does not cover Greenland and the Faroe Islands. Thus, foreign policy plays an important role. The EU's foreign policy is relatively new and still lacks the supranational structure of other EU policy domains (such as the single market, for instance).⁶³ Along with this, the constitutional structure of EU international relations law is fragmented.⁶⁴ The Lisbon Treaty, in effect since January 1, 2009 – although having introduced new external policy institutions to strengthen the EU's foreign policy coordination and consistency – has not principally changed this. Moreover, the main prerequisite to attain a common foreign policy is still lacking. Except for the European Parliament, the “project” of creating a common foreign policy is rarely supported by European institutions. This applies to the European Commission, which is concerned “that it might have to sacrifice competences or prerogatives in the field of external relations,” as well as to the Council, which intends to maintain “its institutional set-up by first creating a new Crisis Management and Planning Directorate and then transferring it en bloc to the External Service.”⁶⁵ A continued lack of political initiative and strategic orientation keeps the EU from securing its position in the world.⁶⁶ This deficiency also affects European efforts in formulating an Arctic policy, in general, and in developing a sustainable resource policy, in particular.

Two other factors that affect European Arctic policy are as follows: (1) the relevance and status of the principle of sustainable development within the Treaties establishing the EU themselves, and (2) the

distribution of power and competences between the EU and the member states. As far as sustainable development as a guiding principle of the Treaty on EU (TEU) is concerned, the current preamble to the TEU maintains the reference to sustainable development in more or less the same manner as the previous TEU did. Moreover, Article 3 (3) of the TEU basically reiterates the EU's commitment to sustainable development and a high level of protection and improvement of the quality of the environment. Regarding its relations to the wider world, the EU shall contribute, among others, to “the sustainable development of the Earth.” The latter objective is particularly important in view of developing states and their role in achieving sustainable development. The international agenda for the EU includes another reference to sustainable development in Title V, containing General Provisions on the Union's External Action. According to Article 21, this action shall “foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; [and] help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.” In this context, the latter clause is particularly relevant to the quality of the environment in Russia and respective management measures, for example (without, however, categorizing Russia as a “developing country”).

In relation to the distribution of power between the EU and member states, the Treaty of Lisbon introduced a catalogue of those competences that were formerly distributed over the whole treaty arrangement and have now become concentrated in Articles 2–6 of the TFEU. While the vast majority of policies comes under the heading of shared competences, where both the Union and the member states share the power to legislate and adopt legally binding acts, resource policy as such does not fall completely in one type of competence or the other. It is rather complex and affects almost all sectorial policies within

⁶³ Michael E. Smith, “Toward a Theory of EU Foreign Policy-Making. Multi-Level Governance, Domestic Politics, and National Adaptation to Europe's Common Foreign and Security Policy”, *Journal of European Public Policy* 11 (4) (2011), 740.

⁶⁴ Paul P. Craig & Gráinne De Burca, *EU Law: Text, Cases and Materials*, (4 ed., 2004) Oxford: University Press, 169.

⁶⁵ Dieter Mahncke, “Post-modern Diplomacy: Can EU Foreign Policy Make a Difference in World Politics?”, *EU Diplomacy Papers* 4 (2011), College of Europe, at 4, 5.

⁶⁶ Annegret Bendiek & Ronja Kempin, “Europe's Foreign and Security Policy Adrift: Strengthening the Role of the EU-3”, German Institute for International and Security Affairs (SWP) Comments (2011), at 1, available at http://www.swp-berlin.org/fileadmin/contents/products/comments/2011_C39_bdk_kmp_ks.pdf.

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the EU.⁶⁷ Due to this complexity, difficulties in defining boundaries between the competencies of the EU and member states might arise in particular cases. To sum up these legal aspects, it is important to consider that when assessing European resource policy, the policy area of access to and supply of natural resources is not consistently regulated in the EU's regulation framework. This patchwork of regulation makes European activities in the area of resource policy difficult to handle and, in particular, difficult to coordinate coherently. Additional difficulties impede EU activities by the lack of a strong and coherent foreign policy.

5.2 Development of the EU's objective of promoting sustainable use of Arctic resources

In the past, European interests in Arctic resources were not regarded as significant enough to be developed in a systematic and coordinated manner. This has changed after summer 2007 when a Russian flag on the seabed below the North Pole was planted and when, due to climate change, increased accessibility to the region's resources started to be predicted. In March 2008, the High Representative and the European Commission issued a policy paper to the European Council with the title *Climate Change and International Security*.⁶⁸ In this paper, European interests toward Arctic trade and resources were explicitly addressed, along with security and geo-strategic dynamics.

In light of the then increasing "race" for Arctic natural resources, especially for mineral resources such as hydrocarbons, the European Parliament, in a resolution on "*Arctic Governance*" in October 2008, expressed its concerns about this competition and its possible consequences for the EU's security and international stability.⁶⁹ The Parliament called on the Commission to address "options for a future cross-border political or legal structure that could provide for the environmental protection and sustainable orderly development of the region or mediate political disagreement over resources."⁷⁰

Subsequently, the Commission issued its communication entitled *The European Union and the Arctic Region* in November 2008⁷¹ – the most far-reaching and comprehensive EU strategic document on Arctic policies to date. According to this communication, the promotion of sustainable use of Arctic resources has been set out as one of three main objectives. The Commission's communication went clearly beyond the previous Parliament's resolution by including natural resource exploitation in the development of an EU Arctic policy. It also addressed the EU's interests in securing an energy supply. Accordingly, the EU, under this objective, should support the exploitation of Arctic hydrocarbon resources while fully respecting strict environmental standards. In this context, four proposals for action were suggested, including the strengthening of long-term cooperation (particularly

with Norway and the Russian Federation), the pressing for the introduction of binding international standards, and promoting further research and development in offshore technology and infrastructures.

Special attention to the handling of Arctic mineral resources was drawn in March 2009, when six groups of Parliamentarians tabled a *motion for a resolution* on an international treaty for the protection of the Arctic.⁷² Therein, the respective members of the European Parliament (MEPs) called explicitly on the Commission and the Council "to work towards establishing a moratorium on the exploitation of geological resources in the Arctic for a period of 50 years [in analogy with the Antarctic Treaty and its Environmental Protocol, Article 7] pending fresh scientific studies." Despite the fact that the necessary majority for such a resolution was beyond reach, this motion, and the following debate in the plenary session, clearly indicated that opinions on the use of Arctic mineral resources varied not only between the European institutions themselves (Council, Commission, Parliament) but also between members of each of these institutions, as in this case, the MEPs – reaching from a comprehensive moratorium on mineral resource exploitation to an open access to these resources and support for their exploitation.

In its *Conclusion on Arctic issues* of December 2009⁷³ (Council of the European Union 2009), the Council welcomed "the gradual formulation of a policy on Arctic issues to address EU interests and responsibilities, while recognizing Member States' legitimate interests and rights in the Arctic." These conclusions also explicitly mention the region's new possibilities for natural resource extraction linked to the melting sea ice and other climate change impacts. Accordingly, an EU policy on Arctic issues should be based not only on "sustainable" but also on "responsible, [...] and cautious action." To take a next step toward the formulation of an overarching approach to EU policy on Arctic issues, the Council recognized

⁶⁷ For a more detailed picture on the EUs competencies towards the Arctic, See Timo Koivurova *et al.*, "The present and future competence of the European Union in the Arctic", *Polar Record* 48 (4) (2010) at 361 – 371.

⁶⁸ European Commission & High Representative Paper S113/08 of 14 March 2008 on "Climate Change and International Security".

⁶⁹ European Parliament Resolution P6_TA (2008)0474 of 9 October 2008 on "Arctic Governance".

⁷⁰ *Ibid.*, para 7 (d).

⁷¹ European Commission Communication COM/2008/0763 final of 20 November 2008 on "The European Union and the Arctic Region".

⁷² European Parliament Joint Motion for a Resolution RC B6 0163/2009 of 30 March 2009 on "The International Treaty for the Protection of the Arctic".

⁷³ Council of the European Union Conclusions of 8 December 2009 on "Arctic Issues".

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“that EU policies on natural resource management that impact on the Arctic should be formulated in close dialogue with Arctic states and local communities and take into account the importance of sustainable management of all natural resources in that region.”

In March 2010, a *debate on Arctic issues* was held in the European Parliament, involving a statement of the High Representative for Foreign Affairs and Security Policy confirming the EU's political and economic interests in the Arctic. Regarding the usage of Arctic natural resources, the representative concluded “that Arctic resources should only be accessed and exploited when we [the EU] have the highest environmental and safety standards and when they are fully respected.”⁷⁴ Although the discussion at this occasion showed again that opinions of MEPs still varied between representatives who called for a moratorium on the exploitation of fossil resources⁷⁵ and others who urged that the Arctic be left to those countries who are directly involved in the region, with the EU staying on the side-lines,⁷⁶ a majority of speakers from different political groups stressed the need for better coordination and consistency of European efforts.

On January 20, 2011, a further step in defining European interests toward the Arctic was made, when the European Parliament adopted a “*Resolution on a sustainable EU policy for the High North*.”⁷⁷ Despite the fact that the title of the basic report and the finally adopted resolution referred to the “High North” and not the Arctic as such (as previous EU documents did), a clear emphasis has been drawn on the region's natural resources. This became evident by highlighting the region's importance for securing the supply of resources and energy needed for the population and industries in Europe. In the followed plenary debate, criticism was raised that a shift from environmental protection to security of energy supply and natural resource use has occurred in the Parliament's attention toward the region. Instead of focusing on a more coherent approach to protect the Arctic environment and balancing this objective with the sustainable use of the region's natural resources – all the more as “sustainability” has been stressed in the title itself of the resolution – neither concrete measures nor effective strategies were outlined by the report.⁷⁸

With a one-year delay, a Commission's progress report – in the form of a communication issued by the Commission and the High Representative and entitled *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps* – was released in June 2012. While reviewing and summarizing the activities the EU has undertaken toward the Arctic since 2008, part one of the communication sets out further steps for the EU's future engagement in the Arctic. Regarding the declared goal of promoting sustainable management and the use of Arctic resources, the communication proposed to

- develop environmentally friendly, low-risk tech-

nologies that could be used by extractive industries in view of increasing mining and oil extraction activities, containing also a proposal for a Regulation on the safety of offshore oil and gas prospection, exploration and production activities;

- strengthen partnership between EU and Greenland that allows for an enhanced dialogue on natural resources in order to share know-how and experience; and
- to build stable and long-term partnerships with major suppliers of energy and raw materials for the EU-market such as Canada, Norway, the Russian Federation, the US and other relevant partners.⁷⁹

The issue of oil and gas exploration reached a new momentum when the European Parliament issued a “*Resolution on the EU Strategy for the Arctic*” in March 2014.⁸⁰ In this resolution, the Parliament drew “attention to the fact that energy security is closely related to climate change” and considered “that energy security must be improved by reducing the EU's dependence on fossil fuels.”⁸¹ In the same context, it highlighted “the fact that the transformation of the Arctic represents one major effect of climate change on EU security [and stressed] the need to address this risk multiplier through a reinforced EU strategy for the Arctic, and through an enhanced policy of EU-generated renewable energies and energy efficiency that significantly reduces the Union's reliance on external sources and thereby improves its security position.”⁸² Regarding oil and gas exploration in the Arctic, the Parliament reiterated that serious environmental concerns relating to the Arctic waters require special attention to ensure environmental protection of the Arctic and called on EU and EEA

⁷⁴ European Parliament Debate of 10 March 2010 on “EU policy on Arctic issues”. The statements of the High Representative for Foreign Affairs and Security Policy and of other Members of the European Parliament (MEPs), here Satu Hassi & Anna Rosbach, are available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20100310+ITEM-011+DOC+XML+V0//EN>.

⁷⁵ *Ibid*, MEP Satu Hassi.

⁷⁶ *Ibid*, MEP Anna Rosbach.

⁷⁷ European Parliament Resolution P7_TA (2011)0024 of 20 January 2011 on “A sustainable EU policy for the High North”.

⁷⁸ *Ibid*, explanations of votes.

⁷⁹ European Commission & High Representative Joint Communication JOIN (2012) 19 final of 26 June 2012 on “Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps”.

⁸⁰ European Parliament Resolution RC-B7-0228/2014 of 12 March 2014 on “The EU Strategy for the Arctic”.

⁸¹ *Ibid*, para 37.

⁸² *Ibid*.

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member states to assess the financial capacity of applicants to cover all liabilities potentially deriving from offshore oil and gas activities in the Arctic.⁸³ Differing from a respective *motion for a resolution*, previously tabled on behalf of the Verts/ALE Group,⁸⁴ the adopted resolution has not addressed the problem of whether adequate clean-up opportunities for oil spills in icy conditions exist,⁸⁵ but it encouraged investment in cold-climate expertise and relevant environment-friendly technologies.⁸⁶ In terms of environmental protection, the mentioned *motion for a resolution* additionally called for the launch of an international debate on environmental governance and better environmental protection of the Arctic, as well as for the establishment of a global sanctuary in waters outside the Exclusive Economic Zones (EEZ) of the Arctic coastal states to be agreed on and respected by both Arctic and non-Arctic countries.⁸⁷ Last but not least, Parliament's adopted resolution appeared also more moderate in terms of environmental concerns, raised by the Greens in regard to intensified oil exploration and inadequate environmental standards in waters around Greenland, and it asked instead for opportunities to "contribute to and assist in the sustainable development of Greenland so that both environmental concerns and the need for economic development are taken into account."⁸⁸ In a nutshell, Parliament's recent resolution, although emphasizing the serious environmental concerns related to oil and gas exploration in the Arctic at several occasions, follows, however, more or less the same cadence as expressed in its resolution of January 2011, mentioned above, by focusing on sustainable development for the High North.

The Council's recent communication entitled '*Conclusions on developing a European Union Policy towards the Arctic Region*', adopted two months later, follows this line by addressing the challenge of sustainable development in a prudent and responsible manner.⁸⁹ In the context of the EU's support for the protection of the Arctic environment, the EU's policies in regard to climate change and air pollutants, including black carbons, are especially emphasized.⁹⁰

Summarizing the described development of the EU's objective toward promoting the use of Arctic natural resources in a sustainable way, it can be concluded that the EU has recognized the increasing importance the Arctic plays in the EU, especially in terms of its economic and geostrategic role. Accordingly, it has set out a range of specific steps to take advantage of the opportunities the Arctic offers while safeguarding the region's environment. However, the agenda and priority setting in this development did not always occur in a coordinated and systematic manner, and the emphasis changed from a strong focus on environmental issues to prioritizing the safeguarding of access and supply of mineral resources. Moreover, the latest statements underline the EU's political intention to reduce its reliance on external energy

resources by stressing, at the same time, its efforts toward renewable energies and improvement of energy efficiency.⁹¹

In contrast to the general development of the EU's policy objective toward Arctic mineral resources, the following section addresses specific measures the EU has undertaken to achieve its goal of promoting sustainable use of Arctic resources.

5.3 The EU's efforts to promote sustainable use of Arctic hydrocarbons

Sustainable development is, as mentioned above, set out in the TEU as a guiding principle as well as an overarching goal of the EU, in particular as it applies also to the EU's external actions. Apart from its climate change and environmental policies, the EU has started to integrate the sustainable dimension in other policy fields, as was underlined in its *2009 Review of the EU Sustainable Strategy*.⁹² The promotion of

⁸³ *Ibid*, para 15.

⁸⁴ European Parliament Motion for a Resolution, MEPs on behalf of the Verts/ALE Group of 5 March 2014 on "The EU strategy for the Arctic", available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B7-2014-0228+0+DOC+PDF+V0//EN>.

⁸⁵ *Ibid*, para Q of the Motion for a Resolution acknowledges that "there are no technologies currently available to adequately clean up oil spills in icy conditions".

⁸⁶ *Supra*, note 81, para 30.

⁸⁷ *Supra*, note 85, paras 25 and 26. In a Press Release of 12 March 2014, Greenpeace referred to this call for a protected area around the North Pole, although falsely cited as part of the adopted Parliament's resolution; available at http://www.greenpeace.org/canada/Global/canada/pr/2014/03/EU_Parliament_resolution_calls_for_Arctic_sanctuary_around_North_Pole.pdf.

⁸⁸ *Supra*, note 81, para 56.

⁸⁹ Council of the European Union Conclusions of 12 May 2014 on "A EU Policy towards the Arctic", available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142554.pdf.

⁹⁰ *Ibid*.

⁹¹ Although in practice, this political intention becomes rather undermined by current factual developments towards closer binding agreements between western energy corporations with the Russian energy giant Gazprom; such as present negotiations, for example, between the Austrian oil and gas company OMV with Gazprom towards the transfer of around a quarter of shares in gas trading at the Central European Gas Hub AG; or the transfer of shares in gas supply and storage from Dutch (WINZ and Wintershall Services) and German energy companies (Wingas und WIEH) to Gazprom, authorized by the EU-Commission at the end of 2013. See *Berliner Zeitung*, *Gazprom als Geschäftspartner*, 26 May 2014 at 9. As regards the Commission's approval, See http://europa.eu/rapid/press-release_IP-13-1207_en.htm.

⁹² European Commission Communication COM/2009/400 final of 24 July 2009 on "Mainstreaming sustainable development into EU policies: 2009 Review of the European Union Strategy for Sustainable Development".

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sustainable use of Arctic resources is one of three main objectives outlined by the Commission's communication entitled *The European Union and the Arctic Region* of November 2008. According to this objective, "the exploitation of Arctic hydrocarbon resources should be provided in full respect of strict environmental standards taking into account the particular vulnerability of the Arctic."⁹³ Thus, a deeper look into EU activities concerning mineral resource exploitation, especially those of hydrocarbon resources, is discussed in the following section. As mentioned, the European energy policy is based on its Energy 2020 Strategy, which calls for not only an effective coordination between the EU and member states but also a consistent and mutually reinforced external dimension with other external activities of the EU.

Better coordination and consistency within the external dimension of the EU energy policy also play an important role as illustrated, for example, by the Commission's proposal to set up an information exchange mechanism on intergovernmental agreements between member states and third countries in the field of energy or to establish a Strategic Group for International Energy Cooperation, composed of representatives of member states and relevant EU services, to achieve a more coherent approach by the EU and its member states.⁹⁴ As far as the Arctic is concerned, the communication explicitly refers to this region as holding a significant potential not only to boost the EU's energy supply but also to contribute to its diversification. Russia and Norway, as the EU's main hydrocarbon suppliers, are especially mentioned under priority 2 – *Strengthening partnerships for secure, safe, sustainable and competitive energy* – where the existing partnerships with both countries should be enhanced and extended.⁹⁵ In October 2012, the decision adopted by the European Parliament and the Commission – *Decision on establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy* – ensures the objective to increase transparency in EU internal market rules and energy security policy goals.

Referring to the question of sustainability, flanking environmental protection measures in connection with resource extraction is of particular interest. Especially when it comes to oil and gas extraction, exploration, development, and production, activities are generally accompanied by considerable, and often grave, direct and indirect impacts on the environment. Regarding oil and gas activities in the Arctic, oil spills in particular are considered the largest threat in the marine environment.⁹⁶ Arctic oil spills – as occurred in the Exxon Valdez accident in 1989 or at pipeline leaks in the Komi Republic and the Alaskan North Slope pipeline in 1994 and 2006 – have clearly demonstrated the challenges in providing clean-up measures and environmental rehabilitation, along with those that affect local economies. The oil spill in the

Gulf of Mexico in 2010, although it did not happen in Arctic waters, raised again questions for environmental sustainability of offshore extraction in this region.

The EU, for its part, has also reacted to related concerns: With an October 2010 communication entitled *Facing the challenge of the safety of offshore oil and gas activities*, the Commission envisaged a new legal framework for offshore exploration and production activities in Europe that would aim at new, EU-wide standards, including criteria for granting drilling permits, controls of the rigs, and safety control mechanisms.⁹⁷ Although applying to European member states only, the Arctic is also mentioned in this communication "due to its particularly sensitive natural environment, harsh climate and significant unexplored hydrocarbon reserves." In this direction, the communication pledges for the introduction of binding international rules or benchmarks, building inter alia on the guidelines of the Arctic Council Offshore Oil and Gas Guidelines of 2009. Furthermore, contacts with Arctic states are essential.

One year later, after further assessment of the member states' offshore regulatory systems and consultations with relevant stakeholders, the Commission submitted a "*Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities*" in October 2011.⁹⁸ This proposal goes further than the existing regime insofar as it proposes to extend EU environmental liability legislation to cover damage to all EU offshore waters and to impose general safety-related obligations that are potentially more stringent than those previously imposed, thus resulting in changes in the licensing process. The Arctic region, again, is especially referred to in this proposal, as serious environmental concerns relating to its waters require special attention to ensure the environmental protection of the Arctic in relation to any offshore activities, including exploration.

However, opinions on offshore drilling are divided within the EU. Previous voices still renewed calls for a moratorium on new offshore oil drilling off EU shores. In July 2011, Diana Wallis, vice president of the European Parliament with special responsibility

⁹³ *Supra*, note 72.

⁹⁴ See therefore especially European Commission Communication at *supra*, note 34.

⁹⁵ *Ibid.*

⁹⁶ *Supra*, note 44 at vi.

⁹⁷ European Commission Communication COM (2010) 560 final of 12 October 2010 on "Facing the challenge of the safety of offshore oil and gas activities".

⁹⁸ European Commission Proposal for a Regulation COM (2011) 688 final of 27 October 2011 on "A Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities".

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for the Arctic and the High North, urged, together with her colleague Fiona Hall from the Liberal Democrat European Parliamentary Party (LDEPP), a special regime for any offshore oil and gas operations in the Arctic.⁹⁹ In September 2012, the Parliament's Environmental Committee voted in its Opinion on the Commission's proposal "that Member States should refrain from authorizing offshore activities as long as effective response to any accident cannot be guaranteed."¹⁰⁰ However, there is a strong lobby that opposes more stringent and EU-wide applicable safety regulations, especially promoted by the UK and Scottish governments as well as by their oil and gas industries. The European Parliament's Industry Committee, in a key vote in October 2012, rejected any attempts to introduce a moratorium on oil and gas drilling in the Arctic.¹⁰¹ The committee also approved a "directive" instead of a legally binding "regulation," with the consequence that member states would have room for implementation and thus for continuing to maintain different standards for operating oil and gas activities in the EU. After following negotiations with the Council, both the European Parliament and the Council achieved an agreement on February 21, 2013, which resumes the status of October 2012, including the legal instrument of a "directive."¹⁰² Thus, offshore drilling will remain a national competence in future, but member states must demand specific information from companies planning to drill in European waters. From an environmental point of view, criticism has been raised about the weakened stringency of required safety rules as well as the non-entitlement of the European Maritime and Safety Agency (EMSA) with overall supervisory power.

The directive was finally adopted in June 2013.¹⁰³ According to the previously achieved agreement between both European institutions, the European Parliament and the Council, the directive kept the competence for issuing licences for offshore drilling activities within member states' authorities and emphasized their independence and objectivity.¹⁰⁴ Progressively, the directive contains comprehensive obligations for preparing and carrying out offshore oil and gas operations, including, among others, an accident prevention policy, a safety and environmental management system, a report on major hazards, and an internal emergency response plan.¹⁰⁵ The directive recognizes that "the serious environmental concerns relating to the Arctic waters require special attention to ensure the environmental protection of the Arctic in relation to any offshore oil and gas operation, including exploration, taking into account the risk of major accidents and the need for effective response."¹⁰⁶ In the same context, member states, who are members of the Arctic Council, are encouraged to actively promote the highest standards with regard to environmental safety in this vulnerable and unique ecosystem.¹⁰⁷ However, with respect to legally binding obligations

toward offshore drilling, the directive remains weak by merely stating that the "Commission shall promote high safety standards for offshore oil and gas operations at international level [*sic*] in relevant global and regional fora, including those relating to Arctic waters."¹⁰⁸

Summarizing the EU measures for Arctic oil and gas resources, it can be stated that the region is especially recognized for boosting the EU's energy supply and contributing to its diversification. This, in particular, applies to Russia and Norway as the major suppliers for oil and gas to the EU-28 market. In this context, last political statements indicate, however, a clear tendency to reduce the EU's reliance on external energy resources, and instead, to increase its efforts towards renewable energies and improvement of energy efficiency. Moreover, it can be observed that the EU is also aware of the particular sensitivity and vulnerability of the Arctic environment, especially in connection with the exploration of oil and gas. With the directive of June 2013 on the safety of offshore oil and gas activities, the EU has introduced a new preparation and reporting system for operators in this field, which also includes the preparation of emergency response plans. And although the new rules will only cover European territories (because the EU has no coastline to the Arctic marine area and thus no jurisdiction over it), they encourage European operators to apply the same policies for preventing major accidents overseas.

⁹⁹ Diana Wallis, "Diana calls for a special regime in the Arctic for oil drilling", 12 July 2011, available at <http://dianawallismep.org.uk/en/article/2011/499803/diana-calls-for-special-regime-in-the-arctic-for-oil-drilling>.

¹⁰⁰ European Parliament Environmental Committee Opinion 2011/0309 (COD) of 24 September 2012 on "The proposal for a regulation of the European Parliament and the Council on safety of offshore oil and gas prospecting, exploration and production activities".

¹⁰¹ European Parliament Industry Committee Adopted Amendments A7-0000/2012 of 12 October 2012 on "The proposal for a regulation of the European Parliament and the Council on safety of offshore oil and gas prospecting, exploration and production activities".

¹⁰² European Commission Press Release of 21 February 2013 on "Commissioner Oettinger welcomes political agreement on offshore legislation", available at http://europa.eu/rapid/press-release_IP-13-149_en.htm.

¹⁰³ European Parliament and Council Directive 2013/30/EU on "Safety of offshore oil and gas operations and amending Directive 2004/35/EC".

¹⁰⁴ See also Council of the European Union Press Release of 10 June 2013 on "Safety of offshore oil and gas Operations", available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/137424.pdf.

¹⁰⁵ *Supra*, note 104, Article 11.

¹⁰⁶ *Ibid*, para 52.

¹⁰⁷ *Ibid*.

¹⁰⁸ *Ibid*, Article 33 (3).

The EU's Promotion of Arctic Resources

VI. Conclusion

The EU, on its way to developing an Arctic policy, still has to clear several hurdles to achieve its objective – the promotion of sustainable use of Arctic energy resources. In doing so, it has to ensure that the exploration and exploitation of Arctic hydrocarbons will be conducted with full respect to strict environmental standards, taking into account the particular vulnerability of this region. While the EU undertook significant steps toward “greening” its overall energy policy, the Arctic, as mostly related to the EU’s external dimensions of this policy, is rarely affected by respective measures. The majority of the present policy measures in the field of resource development, documented in this paper, do not deal with the Arctic as a whole. Instead, they focus on specific sub-regions or countries of the Arctic, depending on their strategic importance for hydrocarbons. Moreover, the particular vulnerability of the Arctic environment, although often mentioned in this context, rarely results in specific measures that would address related risks accordingly. One exception is the EU’s June 2013 directive on safety of offshore oil and gas operations. This directive, despite its shortcomings, introduces comprehensive obligations for preparing and carrying out offshore oil and gas operations,

including, among others, new reporting obligations on major hazards as well as obligations on the provision of emergency response plans for operators active in this field. By encouraging European operators to apply the same policies for preventing major accidents overseas as they apply in their EU operations, the Arctic might also profit from these rules. Another emphasis of the EU’s overall energy policy – the reduction of its dependency on external energy imports to be replaced by promoting energy efficiency with increased production of renewable energy – can be also observed as an aspect of its resource policy toward Arctic energy resources. However, current developments tend to increase European dependency on the Arctic energy supply. This tendency applies in particular to gas imports from Russia to the European market, which will increase in the forthcoming years. Last but not least, deficiencies of necessary coordination among European institutions as well as within overarching policies often pose additional challenges. Therefore, better coordination should be one priority to enhance the EU’s coherence on its path to promote sustainable use of Arctic resources. And finally, as far as an EU policy on “Arctic” resources primarily impacts its external capacity, “speaking with one voice” is, also in this context, a precondition to moving forward.