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EVOLUTION OF EU ENERGY LAW AND POLICY: A BIG COMEBACK OF ENERGY SECURITY IN 2022?

Resume

The armed conflict in Ukraine in 2022 and subsequent worsening of relations between Western countries, including the EU and its Member States, and the Russian Federation, have deeply shaken the existing EU energy law and policy foundations. During the past decades, the EU attempted to develop a comprehensive energy policy based on three pillars – competitiveness and internal market principles, security of supply, sustainability and environmental protection. Starting in the 1990s, liberalization efforts dominated the electricity and natural gas markets. It did not take long for energy security and environmental protection to gain attention. Enlargement of the European Union and occasional problems with external suppliers prompted new measures regarding the security of supply, while a growing body of legislation is also present in the field of environmental protection. The three objectives of the EU energy policy are not always complementary, and some tension and even conflict between them can't be excluded. Although the European Union and its institutions attempt to embrace all three pillars under the sustainability umbrella, this hasn't brought a desirable outcome yet. We are witnessing the big comeback of energy security in 2022, including the adoption of some measures by the Member States that are not in line with decarbonization efforts, at least in short term.

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INTRODUCTION

The energy industry has become very important for the development of modern countries, especially in the 20th century. The situation was the same when speaking of European countries. One of the main ideas after World War Two was to create an organization on the European continent that will regulate steel and coal markets. That idea was materialized through the establishment of the European Coal and Steel Community (ECSC), which consisted of six Western European countries. A few years later, another community emerged, dealing with the regulation of civil use of nuclear energy, namely the European Atomic Energy Community (Euratom). By that time, two out of three European Communities had the energy sector as a field of their activity. Paradoxically, that was not enough to establish an energy policy on the European level. It was a *domaine réservé* for Member States, and there was no will to delegate powers in this field to some supranational institution on the European level. The idea of a common energy policy resurfaced from time to time, especially when the European Community faced some challenges in this field of policy. The obvious examples were two oil crises during the 1970s and subsequent problems with energy supplies, as well as rising energy dependency on non-EU exporters. Most Member States, if not all of them, approached this crisis unilaterally and tried to find a solution by negotiating bilaterally with external suppliers (Labbate 2014, 119). It was only in the late 1980s and early 1990s that the European Commission tried to make a breakthrough regarding the energy markets in the EU, especially when speaking of electricity and natural gas markets. That action was a part of a wider liberalization effort directed towards bringing a Single European Market into existence. Nevertheless, most Member States were against the ambitious European Commission's proposal to radically change the energy industry in short term and all of the Member States, including the United Kingdom, which strongly supported the liberalization process, were not happy with the idea of transferring more competence to the European institutions, particularly to the European Commission (Herweg 2017, 96). An attempt to introduce the energy chapter in the Treaty during the 1990s was also unsuccessful; however, triggering the liberalization process brought a "wind of change" to the European energy market. Adoption of the two Directives by the end of the century was the first important step towards changing the energy industry

in the European Union, and even beyond this institution (Directive 96/92/EC, Directive 98/30/EC).

It was quite clear that the main objective behind these first legislative instruments regarding liberalization of electricity and natural gas sectors was competition and establishing a functional internal energy market. Security of supply and environmental objectives did not play a prominent role during the first phase of the liberalization of energy markets, but that does not mean that European institutions, Member States, and a wide range of stakeholders (i.e., energy companies, consumers associations, NGOs) did not discuss and address these issues. One possible interpretation of this approach was that effective competition and a truly functional energy market will contribute to security and sustainability objectives, so that no further measures are necessary, except those of market forces and its “invisible hand”. As we will see further in the text, this can be true in some situations, but these objectives can potentially be conflicting in some cases.

At the heart of the liberalization process was the phased opening of national markets and integration of fragmented energy markets into a single energy market. The beginning of the process coincided with relatively low energy prices and abundant volumes of energy from external suppliers. One of the main security concerns at that time was energy relations between the EU and countries established in the post-Soviet space. Some important questions arose regarding the security of supplies and security of transit, but neither of them is particularly addressed in the abovementioned Directives on common rules for electricity and natural gas markets.¹ Instead, the European Union chose to employ separate instruments with countries belonging to the former Eastern bloc, including a new group of countries called Central and Eastern Europe and former Soviet republics.

The adoption of the European Energy Charter coincided with the dissolution of the Soviet Union in late December 1991, intending to bring a new political and legal framework for the cooperation of the former East and West.² Initially, this was a non-binding declaration that

1 The exception is a provision that incorporates the concept of “security of supply” as a part of public service obligation (PSO), and according to Art. 3 of both Directives (Directive 96/92/EC, Directive 98/30/EC), Member States may impose this obligation on electricity or natural gas undertakings “in the general economic interest”. This notion of security of supply is different from the external dimension of energy security, which relates to dependency on non-domestic producers and/or suppliers.

2 Dutch Prime Minister Ruud Lubbers proposed a new platform for energy relations and cooperation between the East and the West in June 1990. See: Martha M. Roggenkamp, Anita Ronne, Catherine Redgwell, and Iñigo del Guayo, eds. 2001. *Energy Law in Europe: National, EU and International Law and Institutions*, first edition. New York: Oxford University Press, p. 173.

subsequently evolved into the binding instrument known as the Energy Charter Treaty, covering different areas such as trade, investment, and transit of energy products and materials between different parties. The European Union parallelly deployed bilateral agreements with individual countries alongside this multilateral approach. The first group of countries consisted of Central and Eastern European countries, which were obliged to adopt *acquis communautaire*, including the evolving *energy acquis*, in order to become members of the European Union. Separate Partnership and Cooperation Agreements (PCAs) were concluded with some of the former Soviet republics, including the Russian Federation as a key partner and supplier of energy in the post-Soviet space.

These activities in the field of energy marked the first phase of establishing a common ground for a broader energy policy in Europe. There is little doubt that competition concerns and internal market objectives dominated this phase, while energy security and environmental goals were addressed through internal market paradigm. Radical changes happened at the beginning of the 21st century, such as increased volatility of energy prices, enlargement of the European Union, supply disruptions, and tensions between import-dependent countries and their external suppliers.

TOWARDS A COMPREHENSIVE EU ENERGY POLICY

It became clear that further measures are necessary to speed up the liberalization process in the energy markets in Europe. The European Commission prepared a new legislative package regarding common rules on electricity and natural gas markets, which would become known as the Second energy package. This package of new legislative acts consisted of two Directives and two Regulations, again addressing only the electricity and natural gas sectors (Directive 2003/54/EC, Directive 2003/55/EC, Regulation (EC) No 1228/2003, Regulation (EC) No 1775/2005). Further measures, such as regulated third-party access to networks (regulated TPA), instead of the possibility to choose the negotiated third-party access, as well as stricter unbundling rules (legal and functional unbundling), were adopted. Furthermore, there was an obligation imposed on the Member States to establish independent national regulatory authorities (NRAs), thus contributing to more complex governing and regulation of the energy sector. Internal market concerns still prevailed in these legal acts, while in comparison to previous natural gas and electricity Directives, more attention was directed towards securing supply and environmental protection.

A solid basis for the comprehensive energy policy and eventually EU common energy policy was an energy article incorporated in the Treaty, establishing a Constitution for Europe (TCE2004, Article III-256). However, this Treaty never entered into force because of the referendum results in France and the Netherlands. Quite a similar (energy) article was later added through the Treaty of Lisbon, namely Article 194 of the Treaty on the Functioning of the European Union (TFEU). As we will see, it was the first time that a Treaty article dedicated solely to energy became part of primary EU law. Until the adoption of the Treaty of Lisbon, the European Commission and other EU institutions used powers invested by the other Treaty provisions, such as internal market rules (including free movement provisions or the so-called *four freedoms*), competition law, state aid rules, and environmental policy. The absence of a clear legal basis and energy article in the EU's primary law represented an obstacle to the comprehensive and all-encompassing energy policy.

The failure of the *European Constitution* in this context did not affect the European Commission's determination to actively promote broader energy policy. The Commission used existing powers granted by other Treaty articles in order to shape the European energy sector. Alongside liberalization efforts, several other legal acts were adopted during this period regarding the security of supply, promotion of renewable energy sources, and reduction of CO₂ emissions. This was obviously in contrast with the first phase of the EU activity in the field of energy, when the main concern was how to introduce more competition in the market. One of the first measures directed towards promotion of the use of renewable energy sources (RES) in electricity generation was the adoption of the so-called RES Directive in 2001 (Directive 2001/77/EC). This legal act set only indicative targets for the Member States and no mandatory targets in the first phase of its adoption. In many Member States, there was already a variety of support schemes for the development of renewable energy sources, and the Directive 2001/77, in that sense, did not change any of these support schemes, nor did it harmonize those different schemes (Cameron 2007, 497). Earlier individual initiatives in the Member States regarding renewable energy sources now received formalization at the EU level through adoption of new legislation and establishment of a Union-wide framework for the promotion of new technology and clean energy sources. Growing awareness of climate change and its consequences, including the impact of the energy sector on the environment, pressured European institutions to take action in this field.

With a similar aim, the EU adopted Directive 2003/87, which established the so-called Emissions Trading Scheme (ETS), or greenhouse gas emission (GHG) allowance trading inside the European Union (Directive 2003/87/EC). It was expected that this instrument would help reduction of carbon dioxide (CO₂) emissions coming from large industries and electricity generation. One of the drawbacks of this mechanism was that, in the first phase of its implementation, most of the emission allowances were allocated without charge, and a minor part of allowances was allocated through auctions (Convery 2009, 402, 404). Nevertheless, this instrument was perceived as an effective tool that would contribute to two objectives of energy policy – reduction of CO₂ emissions and energy efficiency.

In parallel, the security of supply concerns gained more importance, at least in an attempt to formalize this concept in the EU energy law and policy. The security of supply objective attracted a lot of attention during the two oil crises back in the 1970s (Gaćinović 2014, 18). At that time, the European Community acted on a predominantly *ad hoc* basis, due to the absence of a comprehensive energy policy in the EU. The central part of the security of supply consideration was a dependency on external and non-EU suppliers, so one of the possible solutions was to diversify energy imports. To some extent, similar fear existed regarding natural gas imports but, as we already pointed out, energy security was not a priority in the initial stage of liberalization during the 1990s. With the expected enlargement of the European Union in 2004, energy security *gained momentum*. The main reason behind this was that many Central and Eastern European countries heavily relied on a single external supplier, while they lacked interconnection capacities and the possibility to import energy from other sources. This was in stark contrast to the situation in Western and Northern Europe.

In the very same year of the enlargement, the European Union adopted Directive 2004/67 concerning measures that would contribute to security of natural gas supply (Council Directive 2004/67/EC). Two years later, a similar Directive was adopted regarding the security of electricity supply (Directive 2005/89/EC). These instruments gave the Member States a wide discretion in the application of their provisions, while emphasizing the importance of coordination and cooperation between them. A wide range of actors were supposed to contribute to energy security, not only the Member States and European institutions, but also regulatory authorities, system operators, producers/generators, suppliers, and finally consumers. Disruptions of gas supplies from Russia in 2006, and especially in 2009, prioritized even further the security component

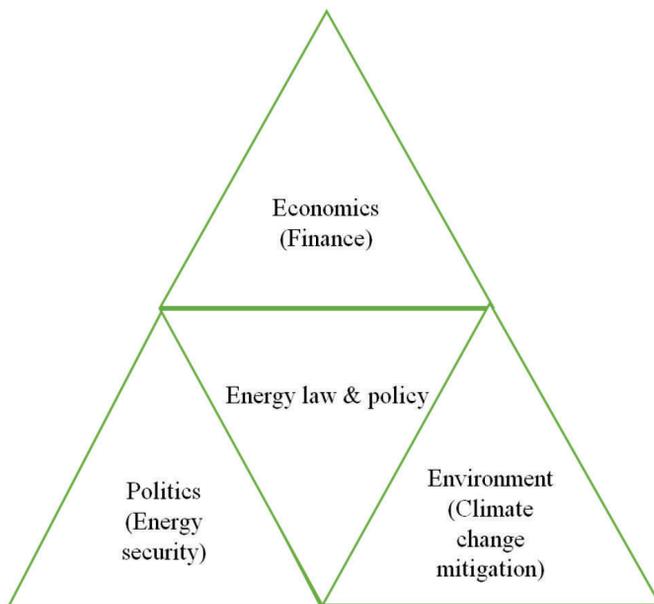
of the EU energy policy (Kovacevic 2009).

The turning point for EU energy law and policy was the adoption of the Treaty of Lisbon in 2009. For the first time, the energy chapter was introduced to the Treaty. Article 194 TFEU established a legal basis for a comprehensive energy policy, with a few objectives – completing the internal market and making it effective, taking into account the security of supply concerns, working on energy efficiency, promoting renewable energy sources and new forms of energy, and, last but not least, enhancing the connectivity between the Member States. Energy policy under the Treaty of Lisbon falls under the shared competence between the EU and its Member States, while the Member States retain the right to decide on their energy mix and different sources of energy, but also exploitation rights and setting the conditions for such exploitation (TFEU 2016, Art. 4 and 194). Finally, different segments of energy policy were covered under the same umbrella, namely Article 194 TFEU. In the same year, the Third energy package was adopted, further strengthening the existing rules and bringing complexity that reflected the evolving nature of energy policy (Directive 2009/72/EC, Directive 2009/73/EC, RegulationEC No 713/2009, RegulationEC No 714/2009, Regulation EC No 715/2009).

SUSTAINABILITY AS AN ALL-ENCOMPASSING PILLAR OF EU ENERGY POLICY

With the adoption of the Third energy package, many believed that the completion of the internal energy market is on the horizon. Additionally, it was clear that a pure *laissez-faire* approach would not be enough to achieve security of supply and environmental objectives and that further measures were necessary. Thus, the Third energy package brought a new complexity and even more regulation. The *three pillars* structure of EU energy policy was more evident than ever, covering competitiveness and internal market, security of supply, and environmental policy. Similarly, Heffron presented this pillar structure of EU energy policy through the energy law and policy Triangle, located in the heart of three other triangles – economics, politics, and environment.

Figure 1. Energy law and policy triangle (energy trilemma)



Source: (Heffron 2015, 3)

Although these three objectives can supplement each other, none can't exclude conflicting interests. The initial assumption was that the competitive and well-established market would contribute to the security of supply and provide market-based mechanisms for environmental protection, without distorting competition. In the same vein, the security of supply measures should contribute to new entrants and more competition by building new infrastructure and diversifying routes and sources of supply, while the promotion of new and renewable energy sources would reduce import dependency and thus minimize energy security concerns. Finally, working on sustainability would bring more competition between new entrants and existing market players and, at the same time, lower the quantity of fossil fuels in the overall energy mix. Unfortunately, this is not always the case. In reality, the EU energy policy is often about balancing different objectives and making a decision on a case-by-case basis. Something similar is happening in 2022, as it will be described in the last part of the paper.

In the same year when the Third energy package was adopted, there was a disruption of gas supplies from Russia. In contrast to the situation in 2006, this crisis lasted longer and had greater consequences

for many European countries, including non-EU states in Southeast Europe (Kovacevic 2009). This rose energy security high on the EU agenda, followed by the adoption of new legislation concerning the security of natural gas supply (Regulation EU No 994/2010).³ Since then, energy security has been an important topic at the EU level, but additional measures were also taken towards sustainability. New Renewable Directive introduced mandatory targets for renewable energy in overall energy consumption, instead of indicative targets present until 2009 (Klessmann et al. 2010, 4679). Further steps were taken to reduce CO2 emissions in various sectors, while new instruments were deployed in order to improve energy efficiency.

A real challenge for EU-Russia energy relations came with the crisis and armed conflict in Ukraine in 2014, once again bringing back the energy security issue. Russia was one of the leading countries in terms of energy export to the European Union, while Ukraine was the main transit route for exporting natural gas from Russia to European consumers. However, the armed conflict in Ukraine did not affect gas supplies from Russia to the European Union, transiting through the Ukrainian territory. This event and other challenges gave impetus for the EU initiatives under the Juncker Commission, and soon enough, the Energy Union was launched in 2015. This project reflects 5 main dimensions of EU energy policy – energy solidarity, security and trust between the EU Member States, internal energy market dimension, energy efficiency, decarbonization, and finally research, innovation, and competitiveness (Austvik 2016, 376-378).

The European Commission came in 2016 with the proposal “Clean energy for all Europeans package”, which was supposed to contribute to decarbonization efforts and bring climate and energy policy closer (Ringel, and Knodt 2018, 2010). This proposal was later adopted, and thus brought major changes to the electricity market in the EU. However, the legislative changes in the natural gas sector were minimal, and this segment is still largely governed by the Third energy package provisions. Highly ambitious climate targets were set, and the EU revealed its goal to become the first climate-neutral continent in the world. Those ambitions are now clearly reflected through the European Green Deal, presented in 2019 by the European Commission (European Commission 2019). Two years later, the Commission presented a *Fit for 55* (or 55% reduction of greenhouse gas emissions), an initiative that is supposed to

³ Regulation EU No 994/2010 was repealed in 2017. See Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, *Official Journal of the European Union* L 280, 28.10.2017, p. 1-56.

considerably reduce greenhouse gas emissions in the European Union by 2030 (Oroschakoff 2021).

It could be argued that the European Union, and primarily the European Commission, prioritize sustainability as one of the traditional pillars of EU energy policy, in order to bring more competition, open up possibilities for employment and new players on the market, and contribute to energy security by reducing dependence on external suppliers. Still, the EU nowadays largely relies on fossil fuels imports and that becomes obvious with the armed conflict in Ukraine in 2022 and the EU's response to it.

THE GRAND RETURN OF ENERGY SECURITY IN 2022 OR AN IMPULS FOR A FASTER DECARBONIZATION?

The Russian attack on Ukraine in 2022 has a strong impact on the EU energy policy, both at the national and EU levels. Since 2014, the European Union and its allies imposed sanctions on Russia over the annexation of Crimea and armed conflict in Eastern Ukraine, while Russia introduced counter-sanctions. The energy relations between the European Union and Russian Federation underwent serious challenges, including the possible interruption of energy supply through the territory of Ukraine, which served as an important transit route to European consumers. Nevertheless, the energy sector was largely excluded from sanctions, with some exceptions regarding oil production equipment and technology necessary for the extraction of unconventional sources; natural gas production wasn't sanctioned (Coote 2018, 1). They also didn't prevent energy companies from the West to invest and participate in joint ventures with Russian companies in Russia and vice versa, while Russian undertakings continued activity in the European energy market.⁴ Despite the overall tensions in political relations between Russia and the European Union, energy cooperation was maintained to a large extent and even deepened in some fields.

One of the planned projects – the “South Stream”, was abandoned, largely due to newly adopted and more complex rules under the Third energy package and Russian opposition to it (Stern, Pirani, and Yafimava 2015, 3-7). Despite volatile political and economic relations between Russia and Türkiye, especially after the downing of a Russian jet by Turkish air forces in 2015, they managed to bring the “TurkStream” project into existence. The importance of this pipeline is that, alongside

⁴ Sanctions relating to the energy sector primarily targeted exploration and production in the Arctic, deepwater Russian offshore, and shale oil deposits utilization.

one string that serves the Turkish natural gas market, the other string extends through the territory of Bulgaria, Serbia, and Hungary, bringing an additional 15.75 billion cubic meters capacity for transport of natural gas per year (Obradović, Stanojević, and Jeftić 2021, 270-272). Another project that provoked much more controversy was the “Nord Stream 2” pipeline, directed towards bringing additional volumes of natural gas from Russia to the German and European markets. This pipeline faced strong opposition inside the European Union, primarily coming from Poland and Baltic countries, but also outside the EU, as was the case with the United States of America or Ukraine (Šekarić 2020, 120). Contrary to the firm determination by Germany and Russia to proceed with the project, this pipeline fell under the sanction regime introduced by the US (Willn et al. 2021). Even a company based in one of the Member States could fall under the sanctions if it was involved in this project, and Germany strongly opposed to this, criticizing the extraterritorial effects of sanctions (Sinha, and Talmon 2020; Stojadinović 119-120).

Since the Russian attack on Ukraine in February 2022, the EU and other Western countries have imposed several packages of restrictive measures, i.e., sanctions.⁵ This time, the introduced sanctions have more impact on the energy sector and overall energy relations between the European Union and Russia. A large number of European countries depend on energy imports from Russia, and that dependency varies greatly from one Member State to another. Europe imports large quantities of natural gas, coal, and oil, but also uranium and other energy sources from Russia. Once again, energy security resurfaced, and this time, it brought along a lot of headaches for energy policymakers in the EU.

The most obvious change came with the decision of Germany to suspend the “Nord Stream 2” project in February 2022. Previously, the Federal Ministry for Economic Affairs and Energy (now Federal Ministry for Economic Affairs and Climate Action) under the former German government concluded that providing certification to the “Nord Stream 2” operator “does not endanger the security of gas supply in the Federal Republic of Germany and the European Union”, as it was published in October 2021 (BMWK 2021).⁶ The assessment of the previous government

5 Russian officials claim that they started a “special military operation” (*О проведении специальной военной операции*) in Ukraine. See: Владимир Путин. 2022. „Обращение Президента Российской Федерации.“ *Kremlin.ru*. 24 февраля 2022 года <http://kremlin.ru/events/president/news/67843>.

6 This procedural step to make an assessment whether issuing the certification to a third country operator would endanger the security of supply of the EU and its Member States represents a requirement of the 2009 Gas Directive and it is transposed to the German national law (Energy Industry Act – *Energiewirtschaftsgesetz*). That requirement is a necessary step before a national regulatory authority (*Bundesnetzagentur* in Germany) decides on certification.

was withdrawn under the new German government in February 2022, effectively depriving *Bundesnetzagentur* (German regulatory authority) of the possibility to proceed with the certification procedure and make a decision (BMWK 2022). This step was a radical change from the previous German position, which had significant consequences, given the fact that this country has been the largest European market for Russian gas exports.

Already in March this year, the EU extended its sanctions in the energy sector, further limiting energy cooperation between the West and Russia. That had a strong impact on the existing business of European companies active in the Russian market and involved in cooperation with Russian energy undertakings. Many Western energy giants announced that they are quitting the Russian market and withdrawing from joint ventures.⁷ Against this, the Russian president signed a decree in August 2022 that effectively limits investors from “unfriendly countries” from selling their assets and shares in Russia at least until the end of the year, while some foreign investors could be exempted from this prohibition by special presidential permission.⁸ Moreover, the EU undertakings fall under the prohibition of the EU restrictive measures to engage in commercial transactions with many Russian state-owned enterprises (SOEs), including energy companies. It is evident that Russian gas major Gazprom is largely excluded from the EU sanctions, given its importance as the main supplier of natural gas.

After a lot of discussion, the European Union managed to agree on banning the imports of coal from Russia. At the same time, there were tough negotiations regarding oil imports from Russia, and after strong opposition from some Member States, the ban on oil imports will be gradually introduced, initially covering the oil coming from Russia by sea. In addition, German and Polish representatives said that they will

7 Among those are Equinor (former Statoil), ExxonMobil, British Petroleum, and Shell. Italian Eni revealed its decision to pull out its 50% stake from the “Blue Stream” natural gas pipeline, which connects Russia with Türkiye under the Black Sea. Interestingly, French TotalEnergies announced it won’t enter into new projects in Russia and provide necessary capital, but remains involved and active in existing projects. Likewise, Japanese companies didn’t cease activities in the Russian market, particularly in the LNG sector. Le Monde. 2022. “Total Energies in Russia: France must stop turning a blind eye.” September 1, 2022. https://www.lemonde.fr/en/opinion/article/2022/08/25/totalenergies-in-russia-france-must-stop-turning-a-blind-eye_5994694_23.html; Yuka Obayashi. 2022. “Japan’s JERA signs new LNG deal with Russia’s Sakhalin-2.” August 26, 2022. <https://www.reuters.com/business/energy/jera-signs-deal-with-new-operator-russias-sakhalin-2-keep-lng-contract-2022-08-26/>.

8 Jeniffer A. Josefson, Vasilisa Strizh, Andrey Ignatenko, Alexandra Rotar, Valentina Semelnikhina. 2022. “Russia introduces ban restricting ability of investors to exit from Russian investments in certain industries.” *Morgan Lewis*. August 10, 2022. <https://www.morganlewis.com/pubs/2022/08/update-russia-introduces-ban-restricting-ability-of-investors-to-exit-from-russian-investments-in-certain-industries>.

voluntarily end the imports of Russian oil coming by pipelines by the end of this year. In contrast, the situation with the natural gas imports is quite different due to the peculiarities of this sector and dependency on infrastructure. However, the absence of decision at the EU level to ban natural gas imports from Russia did not prevent some Member States from a unilateral ban on Russian gas. Lithuanian parliament adopted amendments to the Natural Gas Law that effectively prevent importing natural gas from countries that threaten Lithuania's national security, while allowing transit of natural gas to the Russian exclave Kaliningrad (Interfax 2022a). A similar step was taken by the Latvian parliament, formalized by amending the existing Energy law and banning imports of natural gas from Russia, starting from January 1, 2023 (Interfax 2022b). Estonia announced that it will stop importing Russian natural gas until the end of this year (Mürk 2022), but has not yet taken similar steps as Lithuania and Latvia to amend the existing law.

The situation with natural gas imports from Russia deteriorated even further with the adoption of the decree in Russia which requires the EU and other "unfriendly states" customers to open a specific bank account in rubles in order to pay for deliveries of natural gas (Reuters 2022; Ason 2022). The European partners who refused to open bank accounts in rubles were cut off from supplies of natural gas. Another trouble was associated with the flows of natural gas through the "Nord Stream 1" gas pipeline, connecting Russia with Germany under the Baltic Sea. One of the turbines from the compression station pumping the natural gas through "Nord Stream 1" was sent to Canada for maintenance. Since this country followed the path and, as the EU, imposed a wide sanction regime on Russia, the problem appeared with its delivery after the maintenance was finished. After the Canadian authorities managed to deal with their German counterparts, the sanction waiver was introduced and the turbine was sent to Siemens Energy in Germany. Although the turbine is ready for delivery to Gazprom, the Russian company rejects to take it from Siemens Energy, claiming that the German side hasn't delivered all necessary documents as proof that the maintenance and delivery of the turbine don't fall under the scope of sanctions introduced by the EU and Western partners (Fulwood et al. 2022, 5). This caused the volumes of natural gas transported through the pipeline "Nord Stream 1" to be lowered.

We are witnessing that energy security comes back after a while and threatens to overshadow the decarbonization process, at least in short term. Although the European Commission announced a stronger push towards energy transition and accelerating the deployment of renewable

energy sources which will reduce dependency on fossil fuels and reliance on external suppliers, this can't be achieved in short term.⁹ Part of the European answer to the current situation in the energy sector is bringing back coal, which undermines decarbonization efforts, at least in short term, and reveals that energy security and sustainability are not always compatible and can be quite conflicting. The worsening energy relations with Russia aren't the only challenge to the European energy security, given that a *perfect storm* is looming above the European continent.¹⁰ The EU and neighboring countries have to find solutions for maturing energy infrastructure and its upgrade, building new energy facilities, finding additional volumes of energy, working better on energy saving and efficiency, and securing enough resources to invest in new and renewable energy sources, just to name a few. Until then, it seems that the energy policy of the European Union will stay for a while under the shadow of energy security.

CONCLUSION

Energy law and policy of the European Union have undergone significant challenges and transformations during the decades of its existence. Although energy, or some segments of it, has been present since the establishment of the first European communities, it was only in the 1990s that major novelties were introduced. First energy packages aimed to introduce competition in energy markets, while energy security and environmental protection were in the shadow of liberalization efforts. This coincided with a period of relatively low energy prices and a new chapter in the relationship between the West and the East, echoing cooperation in this field by the end of the Cold war. An important aspect of new relations was the adoption of the Energy Charter Treaty, in parallel to several agreements on cooperation and partnership, which covered energy matters.

9 European Commission issued *REPowerPlan* in 2022, following the Russian attack on Ukraine, to get rid of Russian energy imports before 2030 and promote energy savings and clean energy. See: European Commission. 2022. "REPowerEU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition." 18 May, 2022. https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en.

10 The EU faces obstacles in finding alternative supplies and it becomes evident that there are difficulties in negotiation between Germany and Qatar over a long-term gas contract. Also, the latest visit of Chancellor Scholz to Canada couldn't secure an LNG contract; instead, negotiation focused on hydrogen cooperation and possible export to Germany. Michael Nienaber. 2022. "Germany's Drive to Replace Russian Gas Can't Rely on Canada." *Bloomberg*. August 19, 2022. <https://www.bloomberg.com/news/articles/2022-08-19/germany-s-drive-to-replace-russian-gas-can-t-rely-on-canada>.

By the end of the century, energy policy in the EU became more complex, including growing concerns about energy security and the environmental impact of the energy sector. With the enlargement of the EU, the issue of security of supply received particular attention. Similarly, growing awareness of climate change paved the way for the rapid development of environmental law and principles, highly relevant for the energy sector. A turning point for this comprehensive approach towards energy policy was the incorporation of the “energy article” in the Lisbon Treaty and the adoption of complex and detailed rules through the Third energy package and subsequent legislative activity.

A major challenge to the comprehensive EU energy policy came in 2022, with the armed conflict in Ukraine. This announced a big comeback of energy security and its complex relations with the internal market and competition objectives, as well as sustainability or environmental pillar of energy policy. Although the European Commission publicly speaks in favor of renewable energy as a solution for the current situation, it is questionable whether this transition could effectively happen in the short to medium term. It seems that recent steps taken by the many Member States, such as redeployment of coal power plants and uncertainty in securing enough volumes of energy, mean that the environmental objective would be overshadowed by the security of supply at least in short term.

REFERENCES

- Ason, Agnieszka. 2022. Ruble gas payment mechanism: implications for gas supply contracts. Oxford Institute for Energy Studies.
- Austvik, Ole Gunnar. 2016. “The Energy Union and security-of-gas supply.” *Energy Policy* 96: 372-382. <https://doi.org/10.1016/j.enpol.2016.06.013>.
- Bundesministerium für Wirtschaft und Klimaschutz [BMWK]. 2021. “Economic Affairs Ministry transmits supply security analysis in Nord Stream 2 certification procedure to Bundesnetzagentur.” October 26, 2021. <https://www.bmwk.de/Redaktion/EN/Pressemitteilungen/2021/10/20211026-economic-affairs-ministry-transmits-supply-security-analysis-in-nord-stream-2-certification-procedure-to-bundesnetzagentur.html>.
- Bundesministerium für Wirtschaft und Klimaschutz [BMWK]. 2022. “Minister Habeck comments on the situation in eastern Ukraine and the discontinuation of the certification procedure for Nord Stream 2.” February 22, 2022. <https://www.bmwk.de/Redaktion/EN/Pre>

- ssmitteilungen/2022/02/20220222-minister-habeck-comments-on-the-situation-in-eastern-ukraine-and-the-discontinuation-of-the-certification-procedure-for-nord-stream-2.html.
- Cameron, Peter Duncanson. 2007. *Competition in Energy Markets: Law and Regulation in the European Union*, second edition. New York: Oxford University Press.
- Consolidated version of the Treaty on the Functioning of the European Union [TFEU], *Official Journal of the European Union* C 202,7.6.2016, p. 47–199.
- Convery, Frank J. 2009. “Origins and Development of the EU ETS.” *Environmental and Resource Economics* 43: 391-412. <https://doi.org/10.1007/s10640-009-9275-7>.
- Coote, Bud. 2018. Impact of Sanctions on Russia’s energy sector. Washington DC: Atlantic Council.
- Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, *Official Journal of the European Union* L 127, 29.4.2004, p. 92-96.
- Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, *Official Journal of the European Communities* L 027, 30.1.1997, p. 20-29.
- Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, *Official Journal of the European Communities* L 204, 21.7.1998, p. 1-12.
- Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, *Official Journal of the European Communities* L 283, 27.10.2001, p. 33-40.
- Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, *Official Journal of the European Union* L 176, 15.7.2003, p. 37–56.
- Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, *Official Journal of the European Union* L 176, 15.7.2003, p. 57–78.
- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, *Official Journal of the European*

- UnionL* 275, 25.10.2003, p. 32-46.
- Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment, *Official Journal of the European Union* L 33, 4.2.2006, p. 22-27.
- Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, *Official Journal of the European Union* L 211, 14.8.2009, p. 55-93.
- Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, *Official Journal of the European Union* L 211, 14.8.2009, p. 94-136.
- European Commission. 2019. "A European Green Deal" 11 December, 2019. https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.
- European Commission. 2022. "REPowerEU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition." 18 May, 2022. https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en.
- Fulwood, Mike, Jack Sharples, Jonathan Stern, and Katja Yafimava. 2022. *The Curious Incident of the Nord Stream Gas Turbine*. Oxford Institute for Energy Studies.
- Gaćinović, Radoslav. 2014. „Energetska bezbednost države“. *Politika nacionalne bezbednosti* 6 (1): 9-29. <https://doi.org/10.22182/pnb.12014.1>.
- Heffron, Raphael J. 2015. *Energy Law: An Introduction*. Heidelberg: Springer Cham.
- Herweg, Nicole. 2017. *European Union Policy-Making: The Regulatory Shift in Natural Gas Market Policy*. Cham: Palgrave Macmillan.
- Interfax. 2022a. "Lithuanian parliament officially bans Russian gas imports, except for transit to Kaliningrad." June 28, 2022. <https://interfax.com/newsroom/top-stories/80721/>.
- Interfax. 2022b. "Latvian parliament approves ban on Russian natural gas supplies as of 2023." July 14, 2022. <https://interfax.com/newsroom/top-stories/81322/>.
- Josefson, Jeniffer A., Vasilisa Strizh, Andrey Ignatenko, Alexandra Rotar, and Valentina Semenikhina. 2022. "Russia introduces ban restricting ability of investors to exit from Russian investments in certain industries." *Morgan Lewis*. August 10, 2022. <https://www>.

- morganlewis.com/pubs/2022/08/update-russia-introduces-ban-restricting-ability-of-investors-to-exit-from-russian-investments-in-certain-industries.
- Klessmann, Corinna, Patrick Lamers, Mario Ragwitz, and Gustav Resch. 2010. "Design options for cooperation mechanisms under the new European renewable energy directive." *Energy Policy* 38(8): 4679-4691. <https://doi.org/10.1016/j.enpol.2010.04.027>.
- Kovacevic, Aleksandar. 2009. *The Impact of the Russia–Ukraine Gas Crisis in South Eastern Europe*. Oxford Institute for Energy Studies: NG 29.
- Labbate, Silvio. 2014. "Energy and Transatlantic Relations: From the Attempts to Establish a European Policy to the Eve of the 1973 oil crisis". *Journal of European Integration History* 20 (1): 97-119. <https://doi.org/10.5771/0947-9511-2014-1-97>.
- Le Monde. 2022. "TotalEnergies in Russia: France must stop turning a blind eye." September 1, 2022. https://www.lemonde.fr/en/opinion/article/2022/08/25/totalenergies-in-russia-france-must-stop-turning-a-blind-eye_5994694_23.html.
- Mürk, Ken. 2022. "Estonia to stop importing Russian gas by end of 2022." *ERR*. April 7, 2022. <https://news.err.ee/1608557521/estonia-to-stop-importing-russian-gas-by-end-of-2022>.
- Nienaber, Michael. 2022. "Germany's Drive to Replace Russian Gas Can't Rely on Canada." *Bloomberg*. August 19, 2022. <https://www.bloomberg.com/news/articles/2022-08-19/germany-s-drive-to-replace-russian-gas-can-t-rely-on-canada>.
- Obayashi, Yuka. 2022. "Japan's JERA signs new LNG deal with Russia's Sakhalin-2." *Reuters*. August 26, 2022. <https://www.reuters.com/business/energy/jera-signs-deal-with-new-operator-russias-sakhalin-2-keep-lng-contract-2022-08-26/>.
- Obradović, Žarko, Petar Stanojević, and Zoran Jeftić. 2021. "Natural Gas as a Subject of Geopolitical Interests of States". *Serbian Political Thought* 4: 255-286. <https://doi.org/10.22182/spm.7442021.11>.
- Oroschakoff, Kalina. 2021. "5 things to know about EU's Fit for 55 climate package". *Politico*. June 21, 2021. <https://www.politico.eu/article/fit-for-55-eu-5-things-to-know/>.
- Путин, Владимир. 2022. „Обращение Президента Российской Федерации.“ *Kremlin.ru*. 24 февраля 2022 года <http://kremlin.ru/events/president/news/67843>.
- Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity, *Official Journal of the*

- European Union* L 176, 15.7.2003, p. 1–10.
- Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks, *Official Journal of the European Union* L 289, 3.11.2005, p. 1–13.
- Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, *Official Journal of the European Union* L 211, 14.8.2009, p. 1-14.
- Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, *Official Journal of the European Union* L 211, 14.8.2009, p. 15-35.
- Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, *Official Journal of the European Union* L 211, 14 August 2009, p. 36-54.
- Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, *Official Journal of the European Union*, L 295, 12.11.2010, p. 1-22.
- Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, *Official Journal of the European Union* L 280, 28.10.2017, p. 1-56.
- Reuters. 2022. “TEXT-Putin’s decree on Russian gas purchases in rubles”. March 31, 2022. <https://www.reuters.com/article/ukraine-crisis-russia-gas-putin-decree-idUSL5N2VY5U7>.
- Ringel, Marc and Michèle Knodt. 2018. “The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016.” *Energy Policy* 112: 209-220. <https://doi.org/10.1016/j.enpol.2017.09.047>.
- Roggenkamp, Martha M., Anita Rønne, Catherine Redgwell, and Iñigo del Guayo, eds. 2001. *Energy Law in Europe: National, EU and International Law and Institutions*, first edition. New York: Oxford University Press.
- Sinha, Rohan, and Stefan Talmon. 2020. “Germany considers U.S. extraterritorial sanctions illegal”. *GPIL – German Practice in*

- International Law*. 8 January, 2020. <https://gpil.jura.uni-bonn.de/2020/01/germany-considers-u-s-extraterritorial-sanctions-illegal>.
- Stern, Jonathan, Simon Pirani, and Katja Yafimava. 2015. *Does the cancellation of SouthStream signal a fundamental reorientation of Russian gas export policy?* Oxford Institute for Energy Studies.
- Stojadinović, Miša. 2020. „Geopolitika i energetska bezbednost balkanskih država“. *Politika nacionalne bezbednosti* 19 (2): 113-131. <https://doi.org/10.22182/pnb.1922020.5>.
- Šekarić, Nevena. 2020. „Evropska energetska bezbednost: slučaj Severnog toka 2“. *Međunarodna politika* 1179-80: 119-138. doi: https://doi.org/10.18485/iipe_mp.2020.71.1179_80.6.
- Treaty establishing a Constitution for Europe [TCE], *Official Journal of the European Union* C 310, 16.12.2004, p. 1-474.
- Willn, James, Leigh T. Hansson, Finlay Donaldson, and Tan Albayrak. 2021. “Navigating sanctions of Nord Stream 2.” *Reed Smith*. 16 December, 2021. <https://www.reedsmith.com/en/perspectives/2021/12/navigating-sanctions-of-nord-stream-2>.