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LEGAL CONDITIONS OF EU ENERGY SECURITY

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Abstract. Despite the high level of technological and civilisational development of Western society, its prosperity and sustainability of development most directly depend on energy policy. Quite often, the field of energy security determines which countries are leading and decisive in the world economy and global competitiveness. The latest geopolitical events, namely the Russian military aggression on Ukraine's territory, showed that most European countries, including Russia itself, increasingly depend on individual energy resources. Such a situation creates serious challenges that must be promptly and effectively responded to. One of the most severe challenges is energy blackmail, which is purposefully implemented by the leadership of the Russian Federation to achieve its goals in Ukraine. The threat of destroying Ukraine's energy system is no less severe, and a humanitarian disaster may also follow in this European and Western-oriented country. Unable to defeat Ukraine on the battlefield, the Russian Federation is trying to force the Ukrainian leadership to agree to an actual capitulation by methodically destroying its energy sector. This shows that the European Union must be able to respond to the problems of its energy sector and provide support to its allies to guarantee energy security. In addition, this type of response must comply with international and national law.

Keywords: distribution of energy resources; energy security; legal mechanisms

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JEL Classifications: K14, K20, K22

1. Prerequisites for the establishment of the European united Energy Sector

The most dynamic phase of European energy development began after the Second World War when the economic and legal systems of all countries were practically destroyed and degraded, and thus there was a need for a new unique legal and political formation (association), which would allow achieving the maximum growth of economic efficiency in a short period of time.

Leaders, economists, lawyers, and scientists of leading European countries agreed to establish the European Coal and Steel Community in 1951. It is the European Coal and Steel Community that has had both fantastic economic

and political significance. Because of the cooperation of European countries, a powerful union was created, which established a fundamental basis for the successful development of the EU (Petzina, Dietmar et al., 1981).

Seeing how important the economic and energy cooperation of European countries is, in 1957 the Treaty of Rome established the European Economic Community (History of the European Union 1945-59), which was created to strengthen the economic phenomenon of European countries. At the same time, the Treaty establishing the European Atomic Energy Community (EAK or Euratom) (Euratom Treaty) was signed, which made it possible to avoid abusive and unjustified use of nuclear materials. It is also important to note that all three communities were included in the EU.

The European Union (EU) is a unique partnership in which member states have combined sovereignty in certain areas of policy and law and harmonised laws on a wide range of economic, social and political issues. The basic purpose of the EU was based on three postulates - peace, security and economic prosperity.

According to the authors, the EU has proven its geopolitical importance in a historical cross-section and has confirmed its place in the world economy. However, the EU is currently faced with a series of severe and global challenges in the fields of economy, security and energy, starting from the crisis of the worldwide pandemic of COVID 19 and its impact on economic growth to Russia's aggressive foreign policy and military action in Ukraine (Vilks, Kipane, 2022). Together it poses security and energy threats and undoubtedly affect the economic stability of the EU and the world. It is also important to remember essential areas such as terrorism, global warming, environmental problems and migration issues. These developments have a considerable impact on the stability and security of the EU.

Russia's hostilities in Ukraine have led to irreversible political events in the EU. EU member states, and the rest of the world showed unprecedented solidarity in expressing their opinion. On March 2, 2022, the UN General Assembly overwhelmingly adopted a resolution demanding that Russia immediately stop military operations in Ukraine (General Assembly resolution demands end to Russian offensive in Ukraine). Thus, the majority of the civilised world condemned Russia's hostilities in Ukraine.

Undoubtedly, the war at the EU's external border raises severe and justified concerns in the European security environment and raises the issue that the EU should start intensively building its security infrastructure to avoid global threats.

Energy security must be on the main list of current issues in the EU. The war in Ukraine has shown that many EU countries depend on a single supplier, including some entirely dependent on Russia. Under such circumstances, Russia has usurped the right to manipulate the EU's opinion, decisions and position. Such monopoly dependence makes EU member states vulnerable to supply disruptions. The first signs of such a threat were observed in 2009, when a dispute broke out between Russia and the transit country Ukraine, leading to a severe natural gas shortage for the EU member states (Gas crises between Russia and Ukraine).

Russia's aggression against Ukraine began in 2014 (Clinch, 2022), when clearly illegal actions were carried out in relation to Crimea, annexating this territory of Ukraine. The EU has since then started imposing sanctions against Russia. Due to Russia's aggressive war in Ukraine, the EU has already introduced the sixth package of sanctions against Russia. Considering Russia's influence in the export of gas, coal and fuel, EU member states initially avoided the introduction of sanctions in the field of energy.

This position was based on dependence on energy supplies. According to Eurostat, primary energy production in the EU was 17.7% lower in 2020, than a decade ago. Russia was the main supplier of natural gas, crude oil and coal to the EU in 2020. In 2020, primary energy production was 7.1% lower, than the previous year. Over half

(57.5%) of the EU's gross available energy in 2020 came from imported sources (Energy production and imports). However, with the approval of the fourth package of sanctions, a ban was imposed on new European investments in the entire Russian energy sector (Statement by President von der Leyen on the fourth package of restrictive measures against Russia), which indicated the EU's firm position to withdraw from the Russian energy market segment and to minimise the direct dependence of member states on Russian energy supplies. Such a step is clearly a challenge for the EU member states, and the EU must be more united than ever to create an independent and secure energy system (Tvaronavičienė, 2023). According to the authors, to successfully solve this task, the focus should be on solidarity, regional cooperation, and a unified position.

According to the authors, these three most critical energy security areas can be identified that require increased attention:

1. Security of gas supply;
2. Safety of electricity supply;
3. BRELL.

2. Security of gas supply

The current destabilisation of the gas market gave the EU member states an impetus to think about the safety and stability of the gas market. If earlier it was possible to talk about cooperation with Russia in connection with gas supply, now such cooperation is neither supportable nor possible and excluded from the EU's agenda. The first confirmation that the EU will take such a step was Germany's decision to freeze the controversial (Batzella, 2022; Fetisov, Tsvetkov et al., 2021; Aune, Golombek, et al., 2017) Nord Stream 2 project (Germany halts Nord Stream 2: How big of a deal is it?), which would significantly increase gas supply capacity and increase Russia's influence in the EU gas market sector, while at the same time ensuring stable market functioning. On the other hand, in this step, Russia had a distinctly political goal - to exclude Ukraine from gas supply chains.

According to the authors, in order to ensure the stability and security of gas supply, it is necessary to create a large-scale internal gas market and its system so that gas supplies do not depend on any country's political will to cooperate, nor are they hampered from a legal and technical point of view.

The aim of the legal protection of the EU gas market (*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; 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*) is to ensure, that all Member States implement appropriate instruments to prepare for situations, where gas shortages arise, to improve regional cooperation and coordination in the gas field, and to implement the principle of neighbourly solidarity, which results in Member States committing to cooperate with neighbouring countries (Buzek, 2016).

To protect against major gas shortages, the EU needs to strengthen its gas security system. According to the authors, the EU must now evaluate all risks and create an action plan that would be activated in a crisis that could occur very soon. In the current case, when natural gas prices are disproportionately high on the market (Natural Gas Rate), such a crisis management mechanism would allow citizens and companies of EU member States to feel more stable and plan future investments.

3. Security of electricity supply

The electricity market is experiencing countless global challenges, considering both socio-political and economic events. The mentioned fluctuations are reflected in electricity exchange prices, and it is clear that the security of the gas supply is no less important than the security and stability of the electricity supply (Day-ahead prices).

As a result of the rapid economic growth, electricity consumption is also undoubtedly increasing. In recent months, residents and businesses of all EU member states experienced a sudden rise in electricity costs, and as a result, prices increased not only for food, clothing, shoes but also for services, which made it necessary to immediately introduce support measures, so that such market fluctuations did not affect the solvency and well-being of the population. In addition to this, it is vital to decide on the issue of improving the electricity grid, that is, increasing the existing sources of electricity generators, such as nuclear power plants, thermal power plants, with renewable energy sources.

It is significant that on February 25, 2015, an essential strategy for the creation of a strong Energy Union with a far-sighted climate change policy was presented (COM/2015/080 final) that formulated the goal - to create a strong Energy Union, which would not only transform the EU's energy system but also include measures for the implementation of climate change policy (A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy). As well as, on November 30, 2016, the package (COM(2016) 860 final) "Clean energy for all Europeans" was presented (*Clean energy for all Europeans package (COM(2016) 860 final)*).

The mentioned documents are based on the common energy policy of the EU and its fundamental legal acts, which define common principles and define future directions of actions in the area of energy security and environmental protection (*Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018; Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018; Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019; Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019; Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019*). However, despite all the implemented measures and supply security guarantees, this year's electricity crisis has reached every resident of the EU member state. The overall goal, set by the legislation was not achieved and the electricity crisis has revealed the "weaknesses" of the system, which must be improved immediately.

4. The position of the Baltic States on the BRELL issue

Considering that the Baltic States are a member of the EU, it is undoubtedly important to raise the issue of the separation of the energy market of the Baltic States from Russia and Belarus. In 2007, the leaders of the Baltic States conceptually agreed and expressed a firm position to create such an energy system that could successfully integrate into the energy system of continental Europe and break the historical energy supply ties with Russia and Belarus (Vempere, Jasevics et al., 2021).

It is anticipated that the electricity network of the Baltic countries will be synchronised with the network of continental Europe by 2025. It must be recognised that a number of measures still need to be implemented to achieve the ambitious goals, including reducing CO2 emissions, which are also linked to electricity production and environmental safety issues. It is recognised, that the current large-scale global economic crisis, both taking into account the long-term wave of the COVID 19 pandemic and Russia's war activities on the territory of Ukraine, may delay the withdrawal of the Baltic states from the BRELL network since the creation of new electrical networks can only be implemented with substantial financial investments.

The fact that insufficient funding has been allocated to the Baltic States for this purpose is also confirmed by the statement of Latvian Defense Minister A. Pabriks, announced that Latvia needs to build a nuclear power plant with Estonia (Pabriks: A nuclear power plant should be made together with Latvia or Estonia).

Estonia has previously stated that it plans to look for long-term solutions and that one of the possibilities is the development of nuclear energy (Karnau, 2022). According to the authors, such public statements indicate the stagnation of the idea of the independence of the Baltic States from the BRELL system.

5. Cyber security of supply of energy resources

In the era of technological development, when practically every house has smart devices, "smart home" control centres, the supply of energy resources is also closely related to the use of the latest technologies, which not only satisfy the needs of consumers and increase the level of comfort but also significantly facilitate performance results of suppliers. However, the digitisation of equipment and energy supply requires the careful creation of data security systems and the implementation of preventive measures against possible cybercrimes (*Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace 2013/01 final; Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union; Resilience, Deterrence and Defence: Building strong cybersecurity for the EU /2017/0450 final; EU Security Union Strategy COM/2020/605 final*). The larger and more branched an energy network is, the more vulnerable it becomes to cybercrime.

As the energy segment transforms, that is, as the share of renewable energy resources increases - wind generators, solar batteries, terms such as "smart network" appear, which allows not only to control the indicators but also to adjust them to each individual case, so that the obtained natural resource is used in the most targeted and expedient way.

There is no doubt that as a result of the escalation of the conflict between Russia and Western countries, cyber threats are becoming increasingly important for the state and the private sector. The most significant attack on the energy sector is a cyber attack on the US oil pipeline system, which paralysed the fuel development and delivery system. Because there is an increase in cyber threats, there is a need to create legal mechanisms for data protection (*Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union*).

ENISA (the European Union Agency for Cybersecurity) plays a vital role in the prevention of cyber threats in the EU, which was founded in 2004 and whose main objective is to improve Union policy related to cyber security, including sectoral policy on issues, related to cyber security, to help develop and enhance cyber resilience and response capabilities, to promote Union - level cooperation and to promote a deep understanding of citizens, organisations and companies about cyber security, including cyber hygiene and cyber literacy (*Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act)*).

Currently, the term "cybercrime" is considered from the broadest scope of the concept; that is, the term should be understood as everything that could "damage, disturb or negatively affect" natural and legal persons (Papakonstantinou, 2022).

Such a legal mechanism achieves a fair balance of rights, where legal grounds are sufficient to prosecute individuals who, for example, steal identities, engage in fraudulent activities with transactions, payments, advance payments, use computer viruses to access personal information, passwords, etc.

6. Military challenges of power system security in Ukraine

The Russian missile strikes on Ukraine's energy sector in recent months destabilised the operations of manufacturing companies in Ukraine. They put the Ukrainian people on the brink of a humanitarian disaster. Most of the inhabitants in the conditions of the approaching winter remained without light and heat because most of the heating networks are based on various types of electrical installations that ensure the supply of heat energy.

It is significant that if initially these strikes were directed against the power plants themselves, then recently they are mostly sent against the power distribution stations, which turned out to be much more "effective" from the aggressor's point of view. Such behaviour of the aggressor state poses a serious potential threat to the energy supply system.

The seriousness of the problem is also reinforced by the fact that, according to the data of the survey of the citizens of the Russian Federation, 93% of Russian citizens support such actions of their government in relation to the people of Ukraine. This action created specific legal consequences for the Russian Federation, as the European Parliament resolution of November 23, 2022 recognised the Russian Federation as a state sponsor of terrorism (2022/2896(RSP)) (*European Parliament resolution of 23 November 2022 on recognising the Russian Federation as a state sponsor of terrorism (2022/2896(RSP))*).

All this means that Ukraine, with the support of the EU, should in the near future create an energy supply system that would be sufficiently sustainable and able to neutralise the consequences of each such missile strike as quickly as possible.

Conclusion

As a result of the analysis performed within the framework of the research, it can be concluded that the imposition of sanctions against various sectors of the economy of Russia is subject to rather complicated regulation and research. Most often, sanctions set restrictive conditions for such areas of the economy as the energy sector – limiting the import of electricity, gas and other hydrocarbons. Also, restrictions on exporting technologies that can be used for dual purposes are determined within the sanctions framework. Economic sanctions aim to change Russia's behaviour in the military conflict with Ukraine and ensure energy security throughout Europe. It is anticipated that the electricity network of the Baltic countries will be synchronised with the network of continental Europe by 2025. It is necessary to mention also that as a result of the escalation of the conflict between Russia and Western countries, cyber threats are becoming increasingly important. Because there is an increase in cyber threats, there is a need to create legal mechanisms for data protection and mitigate the negative results of possible attacks on the energy sector of Europe and Ukraine.

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