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Corresponding author: dragana.barjaktarevic@fsp.edu.rs

# SECURITY OF SUPPLY IN THE LIGHT OF TREATY ESTABLISHING THE ENERGY COMMUNITY

**Dragana Barjaktarević**

*Faculty of Business Studies and Law, "Union – Nikola Tesla University"*

**Milan Barjaktarević**

*Banka Poštanska štedionica A.D. Belgrade*

**Abstract:** *Contracting Parties of the Treaty establishing the Energy Community committed themselves to adopt *acquis communautaire* of the European Union in the energy field. As *communautaire* regulations are constantly evolving, Articles 24 and 25 of the Treaty provide the possibility of adaptation, i.e. harmonization with the development of the European Community legislation. Thereby, Contracting Parties have a possibility to harmonize their legislation in the energy field and other related fields constantly bearing in mind the specific situation and options for each Contracting Party.*

*Regular security of supply is safeguarded by sufficient quantities of energy in the market, energy sources reserves, energy market development, safe operation of energy network as well as by the creation of conditions for each entity to have an opportunity to become an energy consumer in case this is what one opts for.*

*The Energy Law ("Official Gazette of RS", No. 145/14, 95/18 – other Law) created the basis for safeguarding operational energy source reserves and mandatory natural gas reserves which will certainly have effect to the security of customers supply in case of disruptions in the energy and energy sources market.*

**Key words:** *Treaty establishing the Energy Community, security of supply, energy and energy sources reserves*

## 1. INTRODUCTION

The idea to establish the Energy Community arose from the need to accomplish the security of energy supply in the region and to connect the Southeastern Europe energy market with the European Union market. The cooperation between the Republic of Serbia and the European Union in the energy field is based on the Treaty establishing the Energy Community which Serbia ratified by the adoption of the Law on Ratification of the Treaty establishing the Energy Community between the European Community and the Republic of Albania, Republic of Bulgaria, Bosnia and Herzegovina, Republic of Croatia, Former Yugoslav Republic of Macedonia, Republic of Montenegro, Romania, Republic of Serbia and United Nations Interim Administration in Kosovo in line with the United Nations Security Council Resolution 1244.

Article 1 of the Treaty prescribes that the European Community member states may become the Members of the Energy Community in line with Article 95 of the Treaty by participating in the work of the Energy Community institutions. The Treaty was also signed by the Republic of Turkey but they aborted the ratification before the final draft was established. Following the ratification of the Treaty, Bulgaria and Romania became the European Union member states and for this reason, they participate in the processes and activities on the Energy Community development on behalf of the European Community. Moldova joined the Treaty on May 1, 2010 (Energy Community, Moldova) while the Ukraine joined on 01/02/2011 (Energy Community, Ukraine).

The above mentioned Treaty both connects the energy markets of the states within the Energy Community and this market with the European Union energy market. The Treaty primarily relates to the electricity and natural gas markets but it also refers to other energy sources transported via networks, such as liquified natural gas, oil, renewable energy sources, hydrogen. The area to which the Treaty applies to is slightly wider than at the moment of ratification both in terms of broadened topics in the field of electricity law and natural gas law and in terms of opening new topics such as the social dimension of the Energy Community and the introduction of the oil law in the Energy Community. The possibilities for the amendments to the Treaty establishing the Energy Community, i.e. widening its implementation scope, i.e. accession of new Parties indicates that the Energy Community is a dynamic category (Lepotić – Kovačević Voxjuris/Projuris).

## 2. SECURITY OF SUPPLY

In addition to competitiveness and sustainability, the security of supply represents one of basic aspects of the European Union energy policy. This topic should be placed in special focus bearing in mind that the ever growing energy consumption globally cannot be covered by fossil fuels only. With reference to this, alternative energy sources are vital since this century will be greatly defined by the method we apply for dealing with energy crisis (Armaroly – Balzani 2006: 52-66).

Energy is vital for human life. Safe and affordable energy supply is crucial for the sustainability of modern societies in particular. However, the state of play becomes unsustainable since further use of fossil fuels is doubtful since the reserves of this energy source are reduced while, on the other side, there is global warming and other ecological problems.

Renewable energy represents the solution for growing energy challenges since renewable energy sources are limitless and ecology-friendly (Asif - T.Muneer 2007: 1388-1413).

The security of supply implies adequate investments in the energy infrastructure, cross-border trade, transit and energy storage as well as physical and economic availability of energy resources. The EU 2000 Green Paper refers to this issue under title "Towards a European strategy for the security of energy supply" which states that the EU strategy related to the security of supply should go into direction of uninterrupted energy supply at a price affordable to all customers with due care for environment protection and sustainable development. In order to accomplish the above mentioned, it is necessary to provide sufficient energy quantities in the market, sufficient energy and energy sources reserves, to invest in energy market and energy networks development and to increase energy efficiency. Regulatory bodies have an important role in the given activities as well as other market players. The states are expected to create conditions for continuous electricity supply, safe operation of power networks, for the removal of administrative obstacles for investments in the power sector, for cross-border cooperation in terms of security of supply as well as for transparent regulatory frameworks, and all this bearing in mind specific circumstances in each country.

### **3. REGULATION (EU) 2019/941 OF THE EUROPEAN PARLIAMENT AND COUNCIL OF JUNE 5, 2019 CONCERNING RISK-PREPAREDNESS IN THE ELECTRICITY SECTOR AND REPEALING DIRECTIVE 2005/89/EC**

The key indicator of successful functioning of the internal electricity market is the guarantee of high-rate security of electricity supply as indicated in the preamble of the Directive 2005/89/EC of the European Parliament and Council of January 18, 2006 related to the measures for the provision of security of electricity supply and investments in the infrastructure. So as to assess the level of security of supply in a country, the European Commission takes into consideration the existing contractual commitments as well as available infrastructure as indicators.

So as to safeguard a high level of security of electricity supply in the internal electricity market, one should take necessary measures directed to the creation of a stable investment climate, i.e. of a legal framework which creates favourable conditions for investors and provides security. In addition, it is necessary to have a good-quality regulation of power network systems and to create a balance between demand and supply.

The very Directive 2005/89/EC establishes the measures aimed at the provision of security of electricity supply and adequate functioning of internal electricity market as well as at the provision of adequate level of production capacity, adequate balance between demand and supply and adequate level of interconnections between member states. The given Directive sets a framework within which the member states should create a transparent, stable and non-discriminatory policy of security of electricity supply (Directive 2005/89/EC).

Proper functioning of single EU electricity market requires continuous cooperation between national transmission system operators on the issues related to network safety including data provision since the transmission and distribution system operators are expected to provide a high level of service to final customers (Ropenus – Jacobsen, etc. 2011: 1949-1956). With reference to this, transmission and distribution system operators, along with electric-

ity producers, suppliers and final customers are relevant electricity market players.

On June 5, 2019, the European Parliament and Council adopted a Regulation (EU) 2019/941 repealing the Directive 2005/89/EC since it was noticed that the power sector was facing changes characterised by decentralisation of markets with several players, higher share of energy from renewable sources and better interconnection between power systems. The Regulation establishes the rules for the cooperation between member states aimed at prevention of power crises, preparation of crises and crisis management. Member states are requested to cooperate and to fully comply with the requirement related to the competitiveness of the internal electricity market.

#### **4. DIRECTIVE OF THE COUNCIL NO. 2004/67/EC OF APRIL 26, 2004 ON CONCERNING MEASURES TO SAFEGUARD SECURITY OF NATURAL GAS SUPPLY**

Since there is a growing importance of natural gas, any disruption in the supply could cause a serious problem in the economy of the Community. Therefore, it is extremely important to safeguard the security of natural gas supply particularly for households (Weisser 2007: 1-5).

The establishment of internal natural gas market requires a minimum common approach to the security of supply particularly via transparent and non-discriminatory policies harmonized with market requirements so as to avoid disruptions. The definition of clear roles and responsibilities of all market players is crucial for the preservation of the security of natural gas supply and proper internal market functioning. Nevertheless, the obligations imposed to companies concerning the security of supply must neither prevent proper internal market functioning nor impose unreasonable and disproportionate burden for the current and future market players (Lepotić Kovačević - Kovačević 2010: 70). Bilateral agreements between member states could be one of the methods to contribute to the compliance with minimum standards in terms of the security of supply particularly bearing in mind Article 3, paragraph 2 of the Directive 2003/55/EC of the European Parliament and Council of June 26, 2003 concerning common rules for the internal market in natural gas.

So as to meet the growing demand in gas, additional gas volume has to be mobilized in the coming decades and a great share of these volumes origin from distant sources and gas should be transported from great distance up to the consumption points. With reference to this, there is a strong common interest shared with countries which are gas producers and gas transit countries in the provision of continuous investments in the gas supply infrastructure (Rapaić 2009: 515-535). Although the establishment of true solidarity between member states at times of bigger crises is particularly important since member states become ever more interdependent in terms of security of supply, this Directive does not affect sovereign rights of member states over their natural resources.

The Directive 2004/67/EC establishes measures for the provision of adequate level of security of gas supply which contribute to proper functioning of the internal gas market, i.e. the Directive establishes a framework within which member states should define a transparent and non-discriminatory policy of security of supply as well as instruments for its enforcement.

Bilateral agreements between member states aiming at the compliance with the stand-

ards related to the security of supply via the use of gas storage capacities located on the territory of another member state represent one of these instruments. In order to prevent a disruption in the internal market functioning, it is necessary to clearly define the roles and responsibilities of all market players. The Directive establishes measures concerning the provision of the security of natural gas supply of specific consumers. With respect to households, states should protect these consumers in cases of partial gas supply disruptions during the period they determine bearing in mind the circumstances in the state as well as in case of extremely low temperatures during the coldest period and during the period with the highest gas demand. The member states may expand the given protection to small and medium enterprises and to other consumers who cannot switch from natural gas to another energy source in case of gas shortage. One of measures related to safeguarding the security of natural gas supply includes the construction of natural gas storage as well as the cooperation with other states so as to enable the use of storage capacities of other states. Some of the instruments which can be used in order to safeguard the security of supply are listed in the Annex to the Directive. So as to improve the security of supply, the Commission who monitors the activities of the states related to the implementation of the Directive 2004/67/EC has a possibility to issue recommendations and proposals for measures to be taken (Council Directive 2004/67/EC).

## 5. CONCLUSION

The idea of the establishment of the Energy Community arose from the need to safeguard the security of energy supply both of individual signatories of the Treaty establishing the Energy Community and of the European Union member states bearing in mind that the energy safety of Contracting Parties is the requisite for social safety of their citizens and for the sustainable development via efficient use of energy and care about unique legal framework on all territories where the Treaty is applied. With reference to this, signatories which are not the European Union member states will harmonise their regulations with the EU legislation concerning energy, market competitiveness, renewable energy sources and environment protection in case they have not done it yet (Maksimović 2006).

By signing the Treaty, Contracting Parties assumed a set of obligations concerning the creation of a stable, regulatory and regional electricity and gas market and, concerning the related implementation of communitaire regulations in the fields of energy, environment protection, competition and customer protection. The Treaty entered into force on July 1, 2006 with the validity period of ten years and it represents an internationally-binding legal act which should represent an additional impulse to the process of establishment of a regional energy market in the Southeastern Europe and to its integration into the European Union internal energy market. The Ministerial Council can extend the validity of the Treaty by unanimous decision of its members. In case at least two thirds of Energy Community Parties vote for the extension of the Treaty, the Treaty will be valid for the Parties which signed its extension in line with Article 97 of the Treaty. In respect to this, the Treaty validity period was extended to additional ten years by the Ministerial Council Decision D/2013/03/MC-EnC which was published on 23/10/2013.

Having in mind that the European Union member states consider the security of supply as a strategic issue (Talus 2013) and that the energy sector development strategy sets long-

term objectives for the development of certain energy activities, development priorities, energy sources and methods for the provision of necessary energy quantities, energy development strategy and policy should exist on the level of each country. The European Union dependence on oil and gas import from non-EU member states challenges the security of energy supply. Statistical data show that more than half (54.0%) gross energy consumption of the EU-28 in 2015 originated from imported sources (Eurostat Statistics Explained).

The security of energy supply as one of three basic aspects of the European Union energy policy (along with competitiveness and sustainability) could be defined as physical and economic availability of energy resources with due care of environment protection and sustainable development. It includes cross-border trade and energy transit, diversification of supply sources, adequate investments in the construction of infrastructure and energy storages (Lepotić Kovačević – Kovačević 2010: 29). In terms of competitiveness, the European Union develops internal energy market which affects both the competitiveness of the European economy and the security of supply and sustainable development in the energy field.

In order to provide an example, we may refer to the Council Directive No. 2006/67/EC of July 24, 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products which elaborates on the security of crude oil and oil products supply in the European Union member states. The security is provided by the establishment and maintenance of minimum oil and oil products reserves. Member states are supposed to provide mechanisms for reserves keeping and these mechanisms should enable them to control the reserves at any moment as well as to use them. Article 2, paragraph 1 of the Directive No. 2006/67/EEC prescribes that these reserves are calculated by taking into account the consumption of motor fuels, airplane fuels, diesel fuels, gas oils, kerosene and airplane fuels of kerosene type as well as heating oil (Council Directive No. 2006/67/EC). The accumulation of adequate crude oil and oil products reserves is the core of efforts made by the European Commission related to the increase of security of supply (Tosun 2011: 7156-7164).

Taking the importance of the security of crude oil and oil products supply as the starting point, the Energy Community Ministerial Council adopted a Decision No. 2008/03/MC-EnC on December 11, 2008 on the inclusion of the oil sector in certain provisions of the Treaty and on the establishment of the Energy Community Oil Forum (Decision No. 2008/03/MG-EnC). This Ministerial Council Decision expanded the Energy Community energy market to oil and oil products market, i.e. to the oil sector, i.e. to the crude oil and oil products supply, trade, production and transport within the given Directive. In addition, the Decision envisaged the establishment of the Oil Forum hosted in Belgrade which accompanies the Electricity and Natural Gas Fora. In the meantime, a new Council Directive No. 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products repealing the Directive No. 2006/67/EC (Council Directive 2009/119/EC).

One of key problems which European countries have been facing lately is the security of oil and gas supply. Being the cleanest energy source, natural gas is an important energy source which has advantages in comparison to other primary energy sources both in terms of its energy efficiency and from the ecological standpoint which makes its consumption growing constantly. (Đurđev 2006: 645).

The Energy Law created the basis for the establishment of operational energy sources

reserves and mandatory natural gas reserves which will certainly have effect to security of customers supply in case of disruptions in the energy and energy sources market.

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