
EU'S ENERGY INFRASTRUCTURE STRATEGY: LESSONS FROM THE SOUTHERN GAS CORRIDOR

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Scope of Review

1. EU's Energy Strategy

2. Key Provisions of EU Law

- Third Energy Package
- Proposal re. Trans-European Infrastructure

3. Southern Gas Corridor

4. Lessons to be Learned

1. *EU's Energy Strategy*

- IAE: EU to import 523 bcm by 2030 compared to 312 bcm in 2009
- Diversification of routes and sources is a strategic priority for the EU
- Infrastructure development is KEY priority of EU's energy strategy
- € 200 bn in investments needed by 2020 to modernise and expand EU's energy infrastructure
- Decarbonisation of the Energy Sector
- Energy Roadmap 2050

2. *Third Energy Package (Art. 36 GD)*

- **MAJOR NEW GAS INFRASTRUCTURE** may be exempt from:
 - Effective unbundling
 - Third Party Access
 - Access to Storage + upstream pipeline networks

- **EXEMPTION GRANTED IF INTER ALIA:**
 - Investment **MUST** enhance competition in gas supply and enhance security of supply
 - Level of risk must be such that investment **WOULD NOT** take place unless exemption granted
 - **At least LEGAL UNBUNDLING of owner of infrastructure and TSO**

- **EXEMPTION GRANTED**
 - For a **defined period** and on a case-by-case basis
 - **Proviso *IN SO FAR AS THIS DOES NOT PREVENT IMPLEMENTATION OF LONG TERM CONTRACTS* has been deleted**

2. *Third Energy Package (Art. 11 GD)*

CERTIFICATION OF TSO CONTROLLED BY THIRD COUNTRY OR A PERSON FROM THIRD COUNTRY

- Request by such transmission system owner or TSO will be refused if IT HAS NOT BEEN DEMONSTRATED that:
 - Entity complies with effective unbundling requirements
 - Certification will not put at risk the security of energy supply of MS and Community taking into account
 - Rights and obligations of the Community arising under international law, including any agreement by Community which addresses the issue of security of energy supply
 - Rights and obligations of MS with third countries, IN SO FAR as they are in compliance with Community law
 - Other specific facts and circumstances of the case and third state concerned

2. *TEP: Implications for Cross-Border Pipelines*

POSSIBLE BREACHES

1. ECT

- F&E T + Non discrimination [Art. 10(1)]
- Endeavour to accord to Investors of other Contracting Parties as regards the making of investments in its Area MFN and NT [Art. 10(2)]
- MFN and NT [Art.10(3)]

2. BITS : F&E, non-discrimination, MFN and NT

3. GATTS [and GATT?]

- Articles II (MFN)
- XVI (market access barriers) – specific commitments of Hungary and Lithuania for transport via pipeline
- XVII (NT) of GATS (only with respect to H and L since EU made no specific commitment re. transport of service via pipeline)
- **Exceptions** : XIV (a) public order , XIV(c) measure necessary to secure compliance with laws (unbundling) or XIVbis security exceptions

2. *Commission's New Proposal*

Proposal for Regulation on Guidelines for Trans-European Energy Infrastructure

- Grants priority to 4 strategic Trans-European Gas Corridors
 - North-South Gas Interconnection in Western Europe
 - North-South Gas Interconnection in Central and SEE
 - **Southern Gas Corridor**
 - Baltic Energy Market Interconnection Plan in Gas
- Projects of Common Interest ("PCI) falling within these corridors are to be drawn up by 31 July 2013 at latest
- Methodology for cost-benefit analysis to be submitted to ACER within one month of Regulation entering into force

2. *Commission's New Proposal*

- General criteria for PCI
 - Necessary for implementation of gas corridors
 - Project displays economic, social and environmental viability
 - Involves at least two MS

- Criteria for gas PCI
 - Market integration, interoperability and system flexibility
 - Security of supply
 - Competition
 - Sustainability

2. *Commission's New Proposal*

Benefits of PCI

- Eligible for EU funding
- One Stop Shop for permitting of PCI
- Permitting process not to exceed 3 years
- Shall be considered “public interest” and may be considered as “overriding public interest” (NB. C-182/10 *Solvay*)

3. *Southern Gas Corridor*

- Until recently at least for Commission and US synonymous with Nabucco
- Aim to reduce dependence on Russian gas and increase security of supply
- **Main Advantages of Nabucco:**
 - Single pipeline project dedicated to new capacity owned by NIC
 - Majority owned by EU buyers, thus under EU control
 - Single IGA with Project Support Agreements
 - Granted exemptions under TEP

3. *Southern Gas Corridor*

- **Main Disadvantages of Nabucco:**
 - No supply of gas secured
 - Agreements reached only for part of the pipeline route
 - Not bankable
- EU losing control over events:
 - TANAP
 - SEEP: South Eastern Europe seen as more prospective market
 - Nabucco West (looking increasingly unlikely)
 - TAP

3. *Southern Gas Corridor*

South Stream

- Main Advantages:
 - Gas supplies secured
 - Preferred by countries in SEE
 - Storage facility being built in Serbia
 - Agreements signed for entire route of pipeline

- Disadvantages of South Stream:
 - Increases dependency on Russia
 - No gas to gas competition
 - Not been granted exemption

- Final Investment Decision expected in November 2012

4. *Lessons to be Learned*

- **New Pipeline projects bringing gas into EU must be supplier led**
 - Appropriateness of TEP and Proposed Regulation ?
 - Relevance of TSO 10 year Network Development Plans
 - Importance of Scalability
 - IGA between EU, Azerbaijan and Turkmenistan to underpin the Trans -Caspian Pipeline
 - EU must acknowledge that International Investment Law provides greater protection to investors than EU law
- **Having the most advanced legal framework in place + Commission IS NOT guarantee that a pipeline will be built**
- **Steps must be taken in EU to reduce legal and regulatory uncertainty** (Case C-17/03 *VEMW* [2005])

4. *Lessons to be Learned*

- **Right balance must be struck between energy and environmental law**
- **Strike Right Balance between Security of Supply and Security of Demand**
 - Blocking of Gazprom's purchase of Baumgarten backfired
 - Turkey signed agreement with Gazprom to construct pipeline
- **Commission must consult SEE countries and Energy Community re. new pipeline projects + SEE MUST become more vocal**
- **Need hard law rules on transit: ECT and draft Protocol on Transit not enough**