

Ana Stanič, E & A Law: EU's Desire to Become Independent of Russian Gas is Unnecessary

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After founding her own law firm in London ten years ago, Ana Stanič now confidently navigates complex energy issues and international disputes, in former Soviet states, EU Member States – including very actively in Slovenia – as well as lately in China. A lecturer at the University of Dundee, UK, Stanič has recently visited Slovenia to speak at a conference on energy regulation; in mid-February she is travelling to a gas conference in Zagreb (where Energetika.NET will be one of the moderators); and on 9 March she is joining us for the 10th strategic energy conference En.odmev 017 in Grand hotel Union, Ljubljana, in a session focusing on the EC's winter package. Hence this interview balances both the winter package and gas-related topics Stanič engages in, with a brief detour to Brexit, which she has been following very closely in the British capital as a founder and director of E & A Law.



You have been dealing a lot with EC's winter package; this will also be one of the topic of your talk at Energetika.NET's En.odmev 017 conference ([MORE](#)). What, in your view, are the benefits of this package, and for whom? Which of the proposals do you think will have the biggest impact on energy companies and why?

At this point, I am not even sure the EU winter package can have any benefits. Needless to say, targets for CO₂, renewables and energy efficiency for the period after 2020 must be set. The existing legislation deals with these targets to 2020; however, I am not sure the Commission's proposal regarding the EU emissions trading system (EU ETS) is ambitious enough for the targets to be achieved in the most effective way possible and without completely doing away with market-based practices in the market. The winter package is taking us towards a regulated and subsidies-based market, where every energy sector will have its own regulations. At

a time when technology requires decentralisation of energy production and supply, the EU Commission is proposing just the opposite: growing centralisation, accumulating its power.

As a lawyer, you often deal with issues related to gas (Nord Stream, previously also South Stream). How would you describe the current situation in gas in Europe? Is the EU's ambition to break its gas dependence on Russia an illusion, and how strong do you think the EU-Russia gas partnership really is?

I think the focus to break the energy dependence on Russia is illusory, but above all unnecessary. The purpose of diversification is to ensure low energy prices and energy security, but the energy the EU is now importing from Russia will have to be replaced by other sources and this is simply impossible in the short or even medium term. Supplying gas from other sources, and at lower prices, also seems unlikely. Making the ETS more ambitious by imposing a tax on CO₂ seems much more urgent. But the fact is that the EU-Russia political relations have hit a low point. Problems started sometime during the Third Energy Package, and escalated when Russia annexed Crimea.

How important is legislation in projects such as Nord Stream or South Stream – is it the political aspect which ultimately prevails? With Nord Stream 2, questions keep surfacing about the legal, political and economic aspects of the project and answers often vary greatly.

This is true. As regards Nord Stream, the political aspect is in the fore. In my view, though, international law is clear on this point: a country has no such jurisdiction over its exclusive economic zone as it has over its territory or territorial sea. In accordance with Article 79 of the United Nations Convention on the Law of the Sea, all states are entitled to lay submarine cables and pipelines in exclusive economic zones of other states, whereas the latter merely have the right to give consent to the route of the pipeline and take reasonable measures to prevent pollution from the pipeline. In other words, this means that no EU Member State – as all are parties to this UN Convention – may say it will only allow construction of Nord Stream 2 in its exclusive economic zone on condition that the provisions of the Third Energy Package have been met, even if this was stipulated by this package, as this would constitute a breach of international law. When Nord Stream 1 was built, the EU Commission did not insist on fulfilling the conditions of the Second Energy Package. Moreover, this was not required in the case of other pipelines supplying gas to the EU. A lot has been said about this situation where the politicians running the EU Commission disagree with the EC legal service's assertions that the Third Energy Package does not apply to Nord Stream 2. Šefčovič's insistence on Nord Stream 2 being fully in line with Energy Union is strictly political, because when we talk about Energy Union we are talking about a political strategy, not a rule of EU law.

Are there legal grounds to prevent Russia from entirely bypassing Ukraine in its gas supply to Europe after 2019?

Not in EU law. However, under the applicable contracts Gazprom is obliged to deliver gas to its buyers in Europe on Ukraine's western border. This means it cannot bypass Ukraine unless it reaches new agreements regarding delivery points.

Could Nord Stream 2 suffer the same fate as the South Stream project?

I don't think so, for reasons stated above.

How well would you say the EU is doing in cross-border energy integration? The single market should have been established a long time ago.

I do think the EU has made some significant steps towards establishing a single market by building interconnections. However, I also think the direction the EU is taking now is wrong, as we are moving from a liberalised to a highly regulated market, where market signals are gradually failing because all energy sectors are subsidised in one way or another. We need an integrated and comprehensive approach to energy.

What do you see as the future of European energy industry – new technologies coupled with renewable energy and e-mobility? Is it also nuclear and gas, or is it a mix of all these sources?

What timeframe are we talking about?

Let's say to 2050.

I would never dare speculate what the energy industry will be like in 2050; however, I believe it will go through a massive change – not with some radical reforms, but merely by following market orientations and the need to cut carbon dioxide emissions.

Speaking of carbon, what are the implications of Trump's plan to minimise climate debate?

This is worrying, just as Brexit is worrying in terms of meeting the EU's 20-20-20 targets to 2020. In the UK, the debate is already on whether it makes more sense to drive investment in clean technology, or to simply pay the EU fine for failing to meet the renewable energy targets.

How has Brexit affected all the energy integration activities across the EU, if at all?

More than anything, Brexit has opened up the question whether the failure to meet the 20-20-20 targets to 2020, which I mentioned earlier, will put any additional strain on other EU Member States. The same holds for the next milestone with the targets the EU has set to 2030, when the UK is no longer part of the "equation".

Another question is whether the UK manages to negotiate access to the single EU energy market. In any case, it seems unlikely that it could retain the rights arising from this unless it also agrees to the four fundamental freedoms the EU is based on. But we all know it was the free movement of people that caused Brexit.

How do people in the UK see their decision for Brexit today?

I think they have fully accepted the result of the referendum. The question remains what happens with Scotland and Northern Ireland, where people voted against Brexit and have now been told by the Supreme Court that the British government does not need to consult them on Brexit. The likelihood of a new referendum on Scottish independence before the UK leaves the EU is increasing day by day.

With a view “from the outside”, how would you comment on the situation in the Slovenian energy industry? What is good, what should be improved, and what should be done to make progress?

Slovenia should start considering a flexible, decentralised energy system as technology is moving towards decentralised generation and complex, integrated systems. It should have a comprehensive, all-encompassing energy plan, rather than a set of separate development plans for gas, renewables, nuclear and electricity. In my view, Slovenia should devise plans for its energy future and make sure that these do not gradually become nothing more than tick-box exercises to comply with the requirements of the EU Commission based on the winter package, thus to prevent relinquishing its power over energy policy to the EU.