

DEVELOPMENT OF FUTURE CROSS-BORDER PIPELINES IN THE BLACK SEA - A LEGAL PERSPECTIVE

Ada Maria Butnaru, LL.M., University of Groningen 2021,
Senior Associate Lawyer at Volciuc-Ionescu Law Firm,
+40746567584, butnaru.ada.maria@gmail.com

Overview

The Black Sea is a crucial transit route for the transportation of natural gas, from the rich reserves of Azerbaijan and the Caspian Sea that could supply Europe in the absence of Russian gas. However, focusing solely on the Black Sea's transit capacity would be oversimplifying the matters, considering that at one point the Black Sea region has been referred to as "*the cradle of European oil production*". Nevertheless, at the moment not one pipeline crossing the Black Sea exists, and only a handful of fully fledged natural gas projects have entered the production phase, in Romania. One of the reasons identified for failing to capitalize on the energy potential of the Black Sea is the lack of a comprehensive legal framework. Although cross-border offshore pipelines have been developed for more than 50 years, no regional nor international instruments exist that would provide a fully functioning legal framework for their development, whether onshore or offshore. As a result, trans-national pipelines are subject to a mix of national, regional, and international regulations.

Method

The legal literature regarding the development of cross-border gas pipelines is limited to the implications of one particular project, Nord Stream 2. Scholars have shown little interest in analyzing how the legal framework influences other existing or future transnational pipelines. As a result, this contribution will propose an innovative approach to the topic by filling in a specific gap and analyzing the legal perspective of developing cross-border gas pipelines in the Black Sea region. The analysis will be based on a doctrinal methodology, grounded on the provisions of the Gas Directive¹, but also other legal instruments, in particular the United Conventions on the law of the sea and the European Union ("EU") treaties.

Results

The entangled legal provisions that need to be observed for developing offshore cross-border pipelines in the Black Sea, whether international, national, or regional laws, have been given a new dimension with the amendments to the EU Gas Directive, which state that EU energy law is applicable to any future cross-border pipelines that are connected to the EU mainland. However, since the majority of the coastal states bordering the Black Sea are not part of the EU, an overarching legal instrument designed solely under EU law would not be easily accepted by the Black Sea riparian states. Having said so, the solution for creating a stable legal environment for future offshore pipelines would be for the coastal states to enter into a framework agreement based on international law which would include all necessary provisions for developing such pipelines, including those of jurisdiction, how to operate the section of the pipeline uncovered by EU law, etc.

Conclusions

The status quo in what regards the development of cross-border pipelines has so far been the conclusion of *intergovernmental agreements or "IGAs"*. After the latest amendment to the Gas Directive, the EU has quasi-unlimited control over the negotiation or renegotiation of IGAs. The European Commission also has the power to not authorize a Member State to pursue an IGA if it conflicts with union law. This provides little incentive for non-EU member states to want to enter into such an agreement. To this end, the development of future cross-border pipelines in the Black Sea has been heavily affected by the rules established at EU level, although the legislative changes were aimed at a completely different project, namely Nord Stream 2.

References

Decision (EU) 2017/684 of the European Parliament and of the Council of 5 April 2017 on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy.

¹ Directive 2009/73/EC concerning common rules for the internal market in natural gas as amended by Directive (EU) 2019/692.

Maria, Kottari; Vlad, Popovici; Jaroslaw, Wisniewsk. Energy politics, pipelines and the Black Sea basin: On the route to diversification of EU energy sources. Published by European Centre for Energy and Resource Security (EUCERS), Department of War Studies, King's College London. Published: February, (2013).

Zajdler, R., 'Legal Aspects of Electricity and Gas Interconnectors with Third Countries, EU Energy Law, Legal constraints with the implementation of Third Liberalization', Cambridge Scholars Publishing, (2012).

Oral, N., 'Regional co-operation and protection of the marine environment under international law: the Black Sea, Martinus Nijhoff Publishers, (2013).

Jones, Christopher. EU Energy Law, Volume 1: The Internal Energy Market. Claeys & Casteels Law Publishing, (2021).