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CUŞNIR, Iaroslav – Licenţiat la Facultatea de drept din anul 5 Universitatea din Bukowina, Cernăuţi

Iaroslav CUSNAR – Graduated from the Faculty of Law in the year 5 University of Bukowina, Chernivtsi

iaroslav555@gmail.com

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THE LEGAL REGULATION OF THE PIPELINE TRANSPORT FUNCTIONING IN THE BOUNDARIES OF THE EUROPEAN UNION

Elena LAGANYAK,
PhD student at the Department of European Law
of Ivan Franko National University of Lviv

Summary

The article outlines an overview of legal regulation of the pipeline transportation systems within the boundaries of the European Union. The pipelines have become an efficient mechanism for transportation of fossil fuels for export their operation demands a well-elaborated legal regulation. Since the early nineties, the EU institutions adopted a set of acts regarding conduits aimed at cumberless fuel transition, creation of a unified fuel market and the liberalization of the pipeline networks. The EU institutions have also unleashed a number of projects on fossil fuel transportation via the pipelines and enacted instruments that regulate requirements to the pipelines network operation in the boundaries of the European Union.

Key words: EU transportation law, EU energy law, pipeline transport functioning, EU Gas Directives.

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ДЕЯТЕЛЬНОСТИ ТРУБОПРОВОДНОГО ТРАНСПОРТА В РАМКАХ ЕВРОПЕЙСКОГО СОЮЗА

Елена ЛАГАНЯК,
аспирант кафедры европейского права
Львовского национального университета имени Ивана Франко

Аннотация

Данная статья освещает обзор правового регулирования трубопроводных транспортных систем в пределах Европейского Союза. Трубопроводы стали эффективным механизмом транспортировки ископаемых топлив для экспорта, а значит, их функционирование требует качественно выработанного правового регулирования. С начала 1990-х институты ЕС приняли ряд нормативно-правовых актов по регулированию функционирования трубопроводов, направленных на обеспечение беспрепятственного транзита топлива, создание унифицированного рынка топлива и либерализацию трубопроводных систем. Институты ЕС также начали ряд проектов по транспортировке ископаемых топлив с помощью трубопроводов и приняли акты, направленные на регулирование функционирования трубопроводных систем в рамках ЕС.

Ключевые слова: транспортное право ЕС, энергетическое право ЕС, функционирование трубопроводного транспорта, Газовые Директивы ЕС.

Formulation of the problem. The development of the international transportation system is to a great extent connected with enhancements in the challenging global processes occurring in the world economy that virtually requires proper and efficient determination of the paramount trends related to the legal regulation of the national transportation systems [1, p. 18-19]. As a matter of fact, pipelines are one of the most concordant elements of the compound transportation system of Ukraine. In a general equipoise of the primary energy consumption in Ukraine, the oil and gas account tolls over 60%. Thus, the junction of the Ukrainian pipeline transportation system with the transportation market of the European Union may evoke the development of the transportation services, the rise in the employment of transitioning capacity, as well as the enhancement of the domestic transport competitiveness in the international transportation market. In such a context, the significance of the pipeline transport can hardly be

overestimated, as it is one of the most expedient types of transportation of oil, petrol products and natural gas from the places of the fuel extraction, tillage and export.

The pipeline systems, especially the cross-border ones, are currently becoming subject to the various international projects that assume a unified approach to the rules of assemblage, operation, and advancement of pipeline transport system not only at an international level, but also at embracing the boundaries of European Union as well as the domestic level of EU-member states. Therefore, the study of the legal basis of the pipelines operation is the focus of many studies conducted by the leading scientists and scholars in the fields of international and European law.

Background research. The significant number of scientists found out that the gradual establishment of a global European gas pipeline market will evoke the integration and liberalization of the pipeline networks over the whole continent of Europe, which will operate and will be developed by unified rules for the entire spectrum of activities, from pricing to economic security and the formation of energy strategic reserves. Thus, the legal aspects of the pipeline transportation in the European Union are crucial for Ukraine, as they will provide an access to the comprehensive network of oil and gas transportation. The examination of legal issues that emerged within the operation of pipeline transport in the EU displays that the legal regulation of trunk pipeline operation substantially disperses from the legal regulations of other transportation means. Yes, in accordance with Art. 90-100 of the TFEU [9], the European Union transportation, involving the pipelines lies in the internal competence of the EU which is executed by adopting decrees as laid down in Art. 288 of TFEU [9]. At the same time, the pipeline transportation within the authority is placed in the aggregate competence of the EU and EU member-states.

Statement of issue. The topicality substantiation is conditioned by a permanent broadening of pipeline grids and export network enlargements as well as lack of legal regulation concerning particular notions of pipeline exploitation in international and EU law. The pipelines and the transfrontier ones, in particular, are currently treated as interstate projects and assume a unified approach towards the norms of assemblage, exploitation and ecology and thereby their subsistence is subjected to the legal standards established by appropriate international instruments. Therefore, the issues of international law regulation of pipelines are of exemplary concordance for Ukraine.

State of investigation. A number of legal scholars have conducted their respective treatises dealing with the issue of pipeline operation regulation both in the European Union and beyond its boundaries. This issue, as well as several homothetic ones, was already examined in articles, monographs and publications among foreign and national savants, including I. I. Lukashuk, M. M. Boguslavsky, Y. I. Chyzhmar, V. G. Shatrov, V. F. Opryshko, B. C. Bruz, E. D. Brown, S. R. Shubert, A. A. Korynevych, D. I. Feld'man and several others. What as to legal regulation of pipeline transportation in the EU, this notion was not explicitly reflected in legal literature.

Main body. The EU transit pipelines cross over one frontier and thereby transceiver oil and gas from the manufacturing state to the importers [1]. Hence, if we are discussing the international law regulation concerning pipeline transportation in the EU, we should outline certain events in the operation of this transportation type. Of predominant importance is the adoption of Transit Directive 91/296/EEC, enacted by the EEC Council in 1991, which implies a free and cumberless transit of goods viz-a-viz pipeline transport within EU. In spite of a doubtful value of this Directive as it was predominantly aimed at generating a unified energy market in the EU boundaries, it was a coarse stride to fulfill a legal regulation of pipeline transportation in the EU.

After the USSR collapse, the issue of energy transfer by means of pipelines has gained a new value. As a result, the EU Commission began a steering project on oil and gas pipeline in 1994, which analyzes and regulates the condition of regional pipeline transport in the EU, Central Asia and Caucasian [7, p. 337-338]. It was aimed to elaborate and implement a decent institutional framework for interstate transport and oil-and-gas transition. An "umbrella agreement" was enacted in the scope of this project that embraced the institutional foundations of interstate oil and gas transportation network that was executed by means of pipelines [5, p.11]. It entered into force in December 1998 on grounds of its publication in 10 CIS states. The Energy Charter Secretariat within a transit working party carried out a substantial progress in the enhancement of the international law regime of transnational pipelines, which became a concordant step for the codification of the legal norms regarding pipeline transportation in the EU boundaries [2].

At the same time, the European Union adopted a new Social and Economic Strategy, involving large-scale structural reforms [4, p.18-19]. As a result, an outstanding value was given to the liberalization of the pipeline gas networks of the EU states, whose aim was to create a single competitive gas market within the whole EU by demonopolizing the respective national markets and giving all European consumers the opportunity to select crude suppliers independently. It was planned to reduce the cost of "blue fuel" for finite consumers and, thus, to increase the attractiveness of their exploitation by legal entities of this most effective and environmentally least harmful fossil fuel. All the abovestated have brought to an increase in the overall competitiveness of the EU economy.

When analyzing an international law regulation of pipeline functioning within the EU, we are to consider the fact that the EU legislation in the sphere of pipeline grids is a constituent of EU energy law and this analysis is thereby impossible without a proper determination of the heading values of EU energy sphere regulation. Yes, such an analysis would not be explicit without a reference to the European Energy Charter, which is the solitary multilateral instrument of general disposal which generates an overall legal base for fulfilling a cumberless transportation of fossils within pipelines. At present time, this agreement is one of the most substantial legal acts for pipeline operation in the EU, taking into account the fact that 54 states have ratified the European Energy Charter [10]. Albeit this act is focused on EU member states [10], it has got outer signatories too. For instance, Japan became the 46th state to ratify this agreement.

Besides, the aspects of pipeline transit are embraced by a complementary

document, namely the Protocol to the European Energy Charter [10]. Currently, this act is by far the only well-established instrument which formulates an aggregate of multilateral international operation principles concerning the existing and the forethought pipeline infrastructure designated for transit. Retracing to the legal regulation of the pipeline transport in the EU, it is relevant to outline that the Protocol, among other issues, contains provisions regarding transit tariff formation, an inhibition of non-sanctioned extraction; multiple criteria are proposed for lodging accession of third state-parties for existing capacities of the pipeline grids.

Apart from the foregoing, we should mention the Kyoto protocol for the framework UN Convention on climate change which was signed in 1997 [11]. It became the leading legal act in EU climate change-related legislation. This protocol assigns quantitative obligations on constraining and reducing exhausts of pipeline transport in every separate state priorities [11]. Of great importance is the Decision No. 1364/2006/EC of the European Parliament and Council of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision No 1229/2003/EC. This Decision hallmarks a list of projects that are subjected to EU aid in compliance with Regulation No. 2236/95 and subdivides them into three categories: firstly, these are the projects which contain mutual interest and are applied to electric and gas grids indicated in the Decision which fulfill the aims and priorities [12]. They are to reflect the conjectural economic viability. The economic viability of the project is estimated by means of expenditure and profit analysis from the view of ecology, safety of the delivery and the territorial unanimity. The projects that are to constitute a mutual interest are listed in Supplements II and III of the Decision. Secondly, these are the priority projects that are selected from the "mutual interest" category. To be plausible in the scope of EU, they are to possess a coarse impact on proper operation of the internal market, security of the conveyance and/or disposal of renewable energy sources. The priority projects, mentioned in the Supplement I of the Decision maintain priority for obtaining EU financial aid. Thirdly, some priority projects that are transfrontier and the ones which possess impact on transfrontier inlet capacities, are declared as projects of all-European magnitude [12]. The projects enlisted to the Supplement I of the Decision designated as "of all-European magnitude" have got a priority value for lodging EU financial aid in the embrace of EU trans-European pipeline grid budgets. A particular attention is paid to their financing from other budgets.

The so-called "Gas Directives" are also of substantial importance for pipeline transport operation regulation in the EU. For instance, the subsistence of an elaborated infrastructure is a constitutive component of gas supply security upon the norms of the EU. In compliance with the 2nd Gas Directive, the necessity of pipeline infrastructure assemblage, involving the capacities of articulation pipelines, is aimed at promoting permanent gas supply. Moreover, the 2nd Gas Directive also regulates the issue of operation reliability monitoring by supply and demand surveillance viz-a-viz national market by authorized public bodies. Consequently, it is apparent that the Gas Directives are a substantial source of pipeline transport legal regulation in the European Union [8].

What is more, the implementation plan of Directive 2009/73/ EU of the European Parliament and the Council of 13 July 2009 on common rules for the internal market for natural gas, as well as the European Parliament and Council Regulation EU/715/2009 on conditions for access the natural gas transmission networks, are essential to analyze the legal regulation of the pipeline transport functioning in the boundaries of the European Union. In such context, it might be important to analyze the Articles 338, 341 and Annex XXVII of the Association Agreements between Ukraine, and the European Union and its Member States since they cover the zones of the common collaboration with regards to pipeline systems [5]. The reason for the implementation design development is to make the fundamental lawful, authoritative, financial, and monetary standards of working and advancement of a competitive natural gas market, to coordinate into provincial and European natural gas markets, and to bring the principles of capacity of the gaseous petrol advertise inside the pipeline systems.

In general, one of the most negative factors in the reformation of the main gas pipelines within the European Union is the ineffective state administration in this area [6]. In particular, in accordance with the international obligations concerning the implementation of the European Parliament and Council Directive 2003/55/EU, the functions of the gas transmission operator should be assigned to a separate legal entity that operates separately from other directions and independently from other participants in the gas market [8, p. 46]. Apart from to the implementation of general management functions, this directive empowers the respective EU state to lead the maintenance of state-owned pipelines in connexion within the defined national and defense interests. Besides, it includes assigning the transportation of oil, petroleum products of natural oil and gas and its distribution, as well as other substances that may be conveyed via pipelines [3, p. 119].

The legal regulation in the field of pipeline transport in the European Union has got a public legal nature in many angles [6]. The strategic component of pipeline transport, especially oil and gas supplies, is determined by their importance both for the economy and for ensuring the national security of each state. To a great extent, it generates a necessity to amplify the control over the creation and operation of pipeline systems. Thus, it is apparent that these strategic provisions are among the most common obstacles and disagreements that must be overcome when concluding both bilateral and global agreements within the European Union.

Conclusions. The liberalization of its energy is one of the most concordant vectors of the structural transformation of the European Union's pipeline transportation networks including the gas market. This would reportedly lead to the long-term changes in the organization of the latter. In particular, there is an actual de-monopolization of the national pipeline gas markets of the EU states by providing all interested economic entities with the right to access the gas transportation system. Under such circumstances, during the next few decades, instead of a regional oligopoly, a single competitive European pipeline network could be formed. On one hand, this will evoke a gradual departure from the practice of concluding contracts

for the supply of gas on a long-term foundation under the conditions of „take-or-pay" as the realities of the competitive market are not faced. There will also be a gradual transition to exchange trading in gas. On the other hand, an enhanced competition in the market will provoke an aggravated reduction in prices for European consumers. Fancies the stable prices for coal, it will lead to a significant increase in demand for natural gas, primarily from the electricity sector. In such context, the significance of the pipeline transport in the European Union can hardly be overestimated.

At present, the EU countries are intensively developing the single internal and competitive pipeline networks. This process is an important component of the EU's single energy policy aimed at solving three main tasks: increasing the competitiveness of the European economy by improving the quality of energy services for consumers, ensuring the security of energy supplies, and protecting the environment including the implementation of the Kyoto agreement on reducing greenhouse gas emissions [11]. In fact, after the entry into force of the EU Gas Directive in August 2000, the explicit national rights and natural gas monopolies operating by means of pipelines were aborted, and so-called „desirable" consumers obtained a justifiable right to choose natural gas suppliers within the EU freely through a non-discriminatory access to the pipeline transportation infrastructure. This gave a powerful impetus to the development of competition in the European gas market.

To sum up the inferences, the pipeline transportation policy within EU is considered in the context of achieving the most important goal proclaimed at the European Council in Lisbon - to make the EU the most competitive economy in the world while preserving the European social model and following the concept of sustainable development [5]. The legal regulation of the pipeline transport functioning is mainly focused on the Directive 2003/55/EC of the European Parliament and European Council concerning the common rules for the internal market in natural gas repealing the Directive 98/30/EC, the Directive 2012/27/EC of the European Parliament and the European Council on the energy efficiency amending the Directives 2009/125/EC and 2010/30/EC and repealing the Directives 2004/8/EC and 2006/32/EC [13], the European energy Charter, and the number of other legal acts applicable to the pipeline transport. Therefore, in compliance with the forgoing legal acts, it appears apparent to conclude that the EU's pipeline networks are aimed at reducing the risks associated with the high dependence of the EU on external energy supplies. Overall, it takes place through limiting demand and making sure that energy prices match real costs, encouraging energy conservation and energy-saving technologies, and promoting the use of renewable energy resources. In this manner, the approximation of the Ukrainian pipeline transportation legislation with the transportation law of the European Union may bring out the advancement of the transportation benefits, the ascent in the employment of the transition limit, and additionally the upgrade of the local transport competitiveness in the global transportation market.

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INFORMATION ABOUT THE AUTHOR

Laganyak Elena Svyatoslavovna – PhD student at the Department of European Law of Ivan Franko National University of Lviv

ИНФОРМАЦИЯ ОБ АВТОРЕ

Лаганяк Елена Святославовна – аспирант кафедры европейского права Львовского национального университета имени Ивана Франко

olenalahanyak@gmail.com