



Ivane Javakhishvili Tbilisi State University
Faculty of Law

Journal of Law

№1, 2018



უნივერსიტეტის
ბანოშტელოზა

UDC(ყოფილი) 34(051.2)

ბ-216

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ISSN 2233-3746

Irakli Samkharadze*

The Impact of EU Energy Law External Action on Georgian Legislation

Georgian energy legislation reform and the creation of stable, competitive and market-oriented regulatory framework is an irreversible, but difficult process. It goes in the ambit of the EU-driven legal harmonization pattern, which causes substantial challenges for Georgian energy sector. The present article reviews the fundamentals of the EU energy law and examines its transportation potential into Georgian legal system. In so doing, this research studies the regional Europeanization instruments and assesses the organizational-institutional structure of the legal obligations stemming from EU-Georgia Association Agreement and Energy Community Treaty. The scientific research is based on the contemporary legal methods and comparative analysis. This manuscript vigorously invokes the existing works of Georgian and west European scientists and legal practitioners in the field of energy law.

Keywords: *Europeanization of Law, Legal Harmonization, Energy Law, Association Agreement, Energy Community Treaty.*

1. Introduction

In the wake of transnational dominant organizations and the global legal order,¹ as defined by Philip Jessup,² it is no wonder anymore legal thinking to be based on pragmatic approaches. In the era of “legal realism,” jurisprudence does not only transcend the national borders, but the legal approximation and harmonization³ become the central element of international cooperation. Along with growing events of the assimilation and fragmentation of law as well as the emerging number of comparative legal studies, today’s lawyer is not only limited to the knowledge of the domestic legal systems.⁴ S/he rather frequently applies the foreign legislation to solve the complicated matters.

Europeanization of energy law, which can be provisionally called as an “export” of the European Union⁵ energy norms, sets a good example of global legal order. In recent years, Europe is more and

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¹ Pierrick L.G., *Global Law: A Legal Phenomenon Emerging from the Process of Globalization*, Indiana Journal of Global Legal Studies, Vol.14 (1), 2007, 212. The examples of Global legal order: “Lex Mercatoria” and “Lex Petrolea.” See Goldman B., *The Applicable Law: General Principles of Law - the Lex Mercatoria*: Lew J. (ed.), *Contemporary Problems in International Arbitration*, London, 1986, 113; Martin A. T., *Model Contracts: A Survey of the Global Petroleum Industry*, Journal of Eenergy & Natural Resources Law, Vol. 22, 2004, 281.

² Ralf M., *Globalization and Law: Law Beyond the State*, in *Law and Society Theory*, Banakar and Travers, 2013, 42.

³ Harmonization of law implies co-existence of different legal systems on the basis of implementation of legislative activity. See Fox E.M., *Harmonization of Law and Procedures in a Globalized World: Why, What and How?* Antitrust Law Journal, Vol. 60, 1992, 594.

⁴ Khubua G., *Theory of Law*, Tbilisi, 2004, 20 (In Georgian).

⁵ Hereinafter “EU” or “Union.”

more interested in expanding the geographical scope of its energy legislation, which exerts a great influence on the domestic regulatory framework of the “third countries.” Transporting EU energy laws is the big “remedy” for Georgia to systemize its ill-regulated energy sector. In contrast with the potential benefits, it is quite ambiguous to foresee the negative side-effects of this process. Analysis of this process is exactly the subject matter of the present paper, which studies the specificities of penetrating EU norms into Georgian legal system and scrutinizes the tendencies of the legal harmonization.

For this particular purpose, the manuscript assesses the organizational-institutional structure of the legal obligations deriving from EU-Georgia Association Agreement and Energy Community Treaty. Structurally, the paper is divided into two main parts. The first chapter creates the conceptual basis and identifies the fundamental principles of EU energy law, while the second delimits the EU competencies in this field. It further discusses the “modernization” trends of Georgian energy legislation via analysing the concrete instruments paving the way towards the approximation of national laws to the European standards.

2. European Energy Law: Fundamental Principles and Definitions

2.1. Legal Origins of European Energy Regulation

According to *Leal-Arcas*, energy has a powerful influence on every aspect of human activity.⁶ It is extremely timely and relevant to think of the modern approaches to the energy matters. During many years, energy was believed to be eternal and constantly accessible. This consideration is by gradually changing due to the massive world events⁷ proving the obsolescence of this idea. Therefore, the modern world is now oriented on reshuffling the respective energy strategies, which requires the development of new regulatory frameworks at the international as well as the national levels.

Europe tends to be one of the biggest global players in this whole process. Energy “centrality” in the EU context traces the development since 1950s.⁸ It is of great importance that in early days the EU founding fathers⁹ masterminded to join the forces in two key energy sectors (coal and steel as well as the atomic energy) and manage them by the common European authority. Based on “*Schuman Plan*”¹⁰ the

⁶ *Leal-Arcas R., Filis A.*, Conceptualizing EU Energy Security Through and EU Constitutional Law Perspective, *Fordham International Law Journal*, Vol. 36 (5), 2013, 1125.

⁷ E.g. Arab oil embargo (so-called “OPEC Shock” in 1973) and increasing the oil prices thereof (1981). In recent years – Italy energy deficit in 2003 and Russia-Ukraine energy dispute in 2008-2009. See *Barton B., Redgwell C., Ronne A., Zillman D.*, The Growth of Concern for Energy Security, in *Energy Security: Managing Risk in Dynamic Legal and Regulatory Environment*, Oxford University Press, 2005, 3.

⁸ *Pradel N.*, The EU External Energy Policy and the Law: Does the EU Really Matter? *Squintani, L., Vedder, H., Reese M., Vanheusden B.*, Sustainable Energy United in Diversity – Challenges and Approaches in Energy Transition in the European Union, *European Environmental Law Forum Book Series*, Vol. 1, 2014, 245.

⁹ See *Guibernau M.*, The Birth of a United Europe: On Why the EU Has Generated a ‘Non-Emotional Identity. *Nations and nationalism*, Vol. 17, 2011, 302.

¹⁰ French Foreign Minister Robert Schuman in his declaration of 9 May 1950, in which he put forward the plan he had worked out with Jean Monnet to bring Europe’s coal and steel industries together to form a European Coal and Steel Community.

renewed European ideology must have been grounded on the supranational control of coal and steel.¹¹ This would create the community to replace the conflict with the cooperation, animosity with prosperity. As a result, two of the three EU founding treaties¹² are related to energy¹³ calling it “the driver for European reunification.” Even the third one¹⁴ is applicable to energy, as ruled by the Court of Justice of the European Union in its landmark *Costa v. Enel*¹⁵ case. It thus can be argued that three founding treaties construct the constitutional basis for the European energy matters.

The EU energy law is the continuous subject of development across the many dimensions of European integration, which has progressively shifted from national sovereignty¹⁶ and heavy state control to liberal markets. The biggest moves with that regard are seen especially in the end of 80s and beginning of 90s¹⁷ when the origins of European energy regulatory primary and secondary principles arise.

The evolution of energy law itself is an obvious outcome of the “legal dynamism”¹⁸ insofar as the energy law does not distinguish with solid regulatory history. The same applies to Georgian energy legislation development standards too, as the first insights of this kind start off in 1997, when the Georgian Parliament adopted the Law of Georgia on “Electricity and Natural Gas.”¹⁹ Nowadays, the existing key legislative acts and respective by-laws in energy sector do not quite create a unified functional system.

Traditionally, energy law has been emerged fragmented in the framework of the different energy resources and initially was not characterized with high degree of cross-border cooperation. The energy related legal matters were the spotlight of more internal regulatory scrutiny, rather than international law.²⁰ Consequently, in the very beginning of its development, energy law was not considered as the discipline with the ability to regulate wide range of energy relations.²¹

Accounting on *Bradbrook's* frequently cited functional definition, as the pioneer in offering the academic concept of the discipline,²² energy law is “the allocation of rights and duties concerning the exploitation of all energy resources between individuals and, between individuals and governments,

¹¹ Talus K., Introduction to EU Energy Law, Oxford University Press, 2016. 1.

¹² The Complexity of EU founding treaties is the result wide range of areas being regulated by them. They articulate all fundamental constitutional, political, economic, social and cultural aspects of legal relations.

¹³ The European Coal and Steel Community (ECSC); European Atomic Energy Treaty (Euratom Treaty).

¹⁴ The European Economic Community Treaty ((EEC).

¹⁵ Case 6/64 *Costa v. Enel*, 1964, ECR.

¹⁶ *Fatouros A. A.*, An International Legal Framework for Energy, Hague Academy of International Law, Vol. 332, 2007, 355-446.

¹⁷ *Heffron J. R., McCauley D.*, The Concept of Energy Justice Across the Disciplines, Elsevier, Energy Policy, Vol. 105, 2017, 663.

¹⁸ *Zillman N. D.*, Evolution of Modern Energy Law: A Personal Retrospective, 30 Journal of Energy & Natural Resources Law, Vol. 30, №4, 2012, 485.

¹⁹ *Ibid*, 486.

²⁰ *Arabidze G., Gudiashvili M., Jishkariani T.*, International Law on Energy and Environment, Tbilisi, 2015, 4. (In Georgian).

²¹ *Heffron J. R., Talus K.*, The Evolution of Energy Law and Energy Jurisprudence: Insights for Energy Analysts and Researchers, Energy Research & Social Science, 2016, 19.

²² See *Samkharadze I.*, Energy Law, as an Academic Discipline, Journal “Justice and Law,” № 2 (58), 2018, 63 (In Georgian).

between governments and between states.”²³ *Attanasio* corresponds to this explanation, who also believes that the energy law is the conglomeration of the rules and regulations governing the development and use of energy resources and energy related facilities and affect the daily lives of energy consumers.²⁴

The present paper is in agreement with these thoughts of *Bradbrook* and *Attanasio* and argues that the central element of energy law is the regulation of energy related right and obligations of various stakeholders over energy resources including its traditional as well as relatively non-traditional ways. Energy law is the integrated system of the laws, normative acts and the rules adopted by the competent authorities.²⁵ Without further engaging into deeper discussion of energy law as an autonomous area of law and the phenomenon of “energy law” v. “energy resources laws,” this manuscript is also in favour of looking at energy from holistic approach (*Heffron*, 2016).²⁶ Sharing *Schill’s* opinion, it is preferable to treat energy law as a field encompassing all energy means, instead of considering different energy resources separately given that energy sources are, in principle, substitutable.²⁷ This is why this article perceives the need of qualifying energy law as the autonomous field of law. It is more logical to develop the field based on the unified philosophical fundamentals and not in the fragmented or specialised manner.²⁸

European Union is the prime example of looking at the energy from holistic approach against its multifaceted nature. EU energy law, which has particularly evolved over the last two decades, represents the subject of the supranational²⁹ (federal-like) supervision. As of today, the EU is a key policy maker and legislator in the field throughout the Europe involving almost the whole continent and even more.

The contemporary energy law theory is isolated from fundamental beliefs of traditional forms of energy. It is thus oriented more on exploring the modern energy trends – low-carbon energy economy and ecological aspects. Today’s energy markets are driven by the rules, which are supposed to incentivize the alternative sources of energy in contrast with the traditional ones.³⁰ This concept must be upheld whilst building the modern Georgian energy law.

²³ The author acknowledges that the suggested definition is somewhat "working definition" and it is possible to emerge future discussion on this issue. The author recommends the following literature for an in-depth analysis: *Bradbrook A. J.*, Energy Law as an Academic Discipline, Vol. 14 (2), Journal of Energy and Natural Resources Law, 1996; *Babie P., Leadbeter P.*, Law as Change, University of Adelaide Press, 2012; *Heffron R. J.*, Energy Law: An Introduction, Springer International Publishing, 2015; *Roggenkamp M., Redgwell C., Ronne A., Guayo I.*, Energy Law in Europe, Oxford University Press, 2007.

²⁴ *Attanasio D.*, Energy Law Education in the U.S.: An Overview and Recommendations, Energy Bar Association Report, 2015, 218.

²⁵ *Gatsereia A.*, Energy Law in *Khubua G., Sommerman K. (eds.)*, Handbook of the Legal Bases of Public Administration, Tbilisi, 2016, 345 (In Georgian).

²⁶ See *Heffron J. R., Talus K.*, The Evolution of Energy Law and Energy Jurisprudence: Insights for Energy Analysts and Researchers, Energy Research & Social Science, 2016, 19.

²⁷ *Schill W. S.*, The Interface Between National and International Energy Law in *Talus K.*, Research Handbook on International Energy Law, Edward Elgar Publishing, 2014, 44.

²⁸ Avoiding differentiation between "energy law" and “energy resources law” is crucial in the sense that all energy sources are in principle interchangeable and it is only up to the national governments to decide from which sources supply the energy demand within the specific jurisdiction.

²⁹ See *Bregadze R.*, Material Supranationalism in European Law, Journal "Georgian Law Review," Tbilisi, 2005, 336. (In Georgian).

³⁰ *Heffron J. R., McCauley D.*, The Concept of Energy Justice Across the Disciplines, Elsevier, Energy Policy, Vol. 105, 2017, 659.

2.2. The Key Specificities of EU Energy Law

“The new European energy era,” – this is how the development stage can be called in which the EU energy law currently locates. It also characterizes with many challenges. Europe’s energy dependability is one of the central problems that the EU is facing to the present day.³¹ The Union is the biggest energy importer from outside world, which unveils the risks related to energy supply and demand and energy security.³² Responding these challenges, in 2007 the EU has adopted the strategy “An Energy Policy for Europe,”³³ which has uncovered Europe’s energy endeavours including the long-term vision of low-carbon energy economy, technology transfer and global greenhouse gas emissions reduction pathway. According to this Strategy, the EU energy policy and law should be based on three fundamental objectives: Competition-liberalisation, sustainable development and security of supply.³⁴ In principle, these three core policy pillars are interchangeable by nature and they need to be achieved jointly when discharging the EU energy policy action.

In order to effectively realise Europe’s key energy objectives, special attention must be paid to the legal enforcement measures.³⁵ With that regard, it is crucial to recourse to the Internal Energy Market³⁶ idea, which is the good exemplification of afore-mentioned supranational governance in terms of transferring the sovereign rights from the member states to the EU institutions. Respecting the competition rules and anti-discriminatory legislation makes up the core principle of these processes that are primarily ensured by the loyalty to founding treaties and secondary legislation.³⁷

These rules are mainly incorporated by the European legislation (regulations, directives and decisions)³⁸ creating the legal framework. In this respect, the main law is the Lisbon Treaty – primary EU legal source with almost the constitutional nature.³⁹ Introducing the new legal basis in the field of energy, Lisbon is a big stepping stone to set out EU energy policy objectives.

³¹ Based on Eurostat Survey, EU is 54 % dependent on energy import. See *Rostowska, M.*, Energising TTIP: A Step towards Better EU Energy Security, PISM Bulletin, № 57, 2014, 652.

³² *Andoura S., Hancher L., Van der Woude M.*, Towards a European Energy Community: A Policy Proposal, Notre Europe, 2010, 56.

³³ Communication from the Commission to the European Council and the European Parliament of 10 January 2007, An Energy Policy for Europe COM(2007) 1.

³⁴ *Talus K.*, EU Energy Law and Policy: A Critical Account, Oxford University Press, 2013, 56.

³⁵ Respective articles: *Esch V. D. B.*, Legal Aspects of a European Energy Policy, 2 Common Market Law Review, 1965, Issue 2, 139-167; *Omorogbe Y.*, Promoting Sustainable Development Through the Use of Renewable Energy: The Role of the Law in: *Zillman D., Redgwell C., Omorogbe Y., Barrera-Hernández K. L.*, Beyond the Carbon Economy, Oxford University Press, 2008, 39.

³⁶ In broader sense, the Internal Energy Market may be differentiated from the Common Energy Market. Nevertheless, the present article does not consider this issue and applies them interchangeably. For detailed analysis see *Jegen M.*, Energy Policy in the European Union: The Power and Limits of Discourse, Les Cahiers Européens de Sciences Po., № 2, 2014, 2.

³⁷ *Andoura S., Hancher L., Van der Woude M.*, Towards a European Energy Community: A Policy Proposal. Notre Europe, 2010, 58.

³⁸ *Kanellakis M., Martinopoulos G., Zachariadis T.*, European Energy Policy – A Review, Energy Policy Journal, Vol.62, Elsevier, 2013, 1021.

³⁹ Should not be mixed with the Treaty establishing a Constitution for Europe, which is an unratified international treaty due to the failure on Dutch and French referenda in 2005.

The Article 194 of the treaty translates the policy goals into legally binding measures (Talus, 2016).⁴⁰ It spells out what to be expected from Europe in order to achieve the policy objectives. These include: a) Ensuring the functioning of the energy market (194 (1a)). The present provision is the mere codification of internal energy market standing the competition rules in the core of this process. b) Ensuring security of energy supply in the Union (194 (1b)). This provision is the reflection of Europe's increased energy dependence. Although it is not clarified what to be meant by the "security of supply," it must be considered as the "state, when the consumers have full access to energy resources with relatively reasonable price."⁴¹ Therefore, this clause is focused on developing the legislation targeted on avoiding the energy security risks and diversifying EU's energy resources. c) Promoting energy efficiency and energy saving and the development of new and renewable forms of energy (194 (1c)). Although the treaty does not clarify it, environmentally-friendly legislation must be implied in this clause. This is Europe's "warning" not to adopt the legislative acts undermining the environmental interest.⁴² d) Promoting the interconnection of energy networks (194 (1d)). This is somewhat external dimension of EU energy policy, as functional and effective interconnections is the key aspect of effective cross-border cooperation.

Afore-discussed policy pillars are very much dependent on external energy policy. Therefore, Europe is to create the pan-European network, which would expand the geographical scope of the EU energy law. Pursuing this politics, EU's energy law applicability is expanding beyond the current domain of the EU and involves all non-EU countries, which are voluntary adopting the EU norms in their domestic legal systems.⁴³

Two issues need to be clarified at this point: a) Does the EU enjoy the external energy competence to push the cross-border cooperation? b) In case such a competence exists, what are the concrete legal mechanism that EU applies to pursue its external energy policy? These two questions will be highlighted in the next chapter of the paper analysing the EU impact on current global energy regulatory on the basis of Georgian example.

3. International Dimension of EU Energy Law

3.1. EU's External Energy Competence

Europe's increasing energy dependence has been mentioned in the first part of the manuscript influencing on the internal as well as the external action of the EU energy policy. Recent years led a greater

⁴⁰ Prior to the entry into force of Lisbon treaty, general EU energy regulatory framework was based on indirect legal basis especially on the provisions of Environmental Law (Article 175); Legal harmonization general principles (Article 100); Competition rules (Articles 81-88); International development policy (Articles 130-131); Trans-European networks (Article 154).

⁴¹ *Barton B., Redgwell C., Ronne A., Zilleman D. (eds.)*, Energy Security – Managing Risk in a Dynamic Legal and Regulatory Environment, Oxford University Press, 2004, 5.

⁴² *Ehricke U., Hacklander A.*, European Energy Policy on the Basis of the New Provisions in the Treaty of Lisbon in *Bausch A., Schwenker B. (eds.)*, Handbook Utility Management (Berlin Heidelberg, Springer-Verlag, 2009, 752.

⁴³ *Featherstone K., Radaelli C.*, The Politics of Europeanization, Oxford University Press, 2003, 25.

involvement of the EU in this field and external energy policy became one of the central elements⁴⁴ of today's EU diplomacy. In 2006 European Commission points EU External energy dimension as the external element of the foreign policy putting big emphasis on external energy cooperation.

Being qualified as a "*sui generis*"⁴⁵ interstate organization mired in-between intergovernmental and supranational features, this ambiguity is mostly seen in the external representation of the EU, which applies to the Europeanization of law as well. According to the Article 4 (2) of the Lisbon Treaty, energy is one of those specific and complex fields, where there is no explicit competence and it is usually "shared" between the EU and the member states to be decided in accordance with the subsidiarity and proportionality principles. This means, that the EU adopts legally binding norms in the field only in case this is more effective and adequate to be done at the European level rather than adopting them by the member states.⁴⁶

Due to the multifaceted nature of energy, different approaches exist on EU competence per different energy-related matter, which is the subject of a specific assessment. Therefore, the concrete legal norm must be found to specify the energy competence. Afore-mentioned Article 194 of the Lisbon Treaty can be considered as such a specific norm. However, this norm at the same time requires high degree of cooperation between the EU and the member states ("in the spirit of Solidarity") when discharging the energy activities. This clause does not shed the legal certainty and it is not thus clear what to be considered in such joint act of solidarity.⁴⁷ Is there any other legal solution?

While Article 194 Treaty does not explicitly mention any external action in the field of energy, by virtue of the theory of "implicit powers", now codified in Articles 216 (1) and 3 (2), enables the EU to develop a real external energy policy. What is more, the Articles 47 should be mentioned in this respect, which empowers the Union with the international legal personality to contract certain international agreements and carry out effective external representation.⁴⁸ Speaking from the practical perspectives, the latest developments also show that the EU enjoys almost exclusive competence to adopt the energy legislative acts and enforce them.

As an interim conclusion, the compilation of these norms seems to be the concrete legal solution empowering the Union to extend the application of its energy law extra-territorially. Through Lisbon the EU acquires effective competence in the field of energy policy, which is "enough" for the Union to expand the application of its energy legislation. This is mainly executed by the Europeanization of law, which includes "the incorporation of formal and informal rules, procedures, policy paradigms, styles, ways of doing things, shared beliefs and norms into domestic legal systems."⁴⁹ One of the common

⁴⁴ Green Paper, A European Strategy for Sustainable, Competitive and Secure Energy, COM(2006)105.

⁴⁵ The EU is a *sui generis* regional international organization whose status is still controversial. Detailed discussion about the legal nature of the Union falls beyond the scope of this paper. See Metz J., Expert Groups in the European Union: A Sui Generis Phenomenon?, *Journal Policy and Society*, Vol. 32, № 3, 2017, 267.

⁴⁶ Piris J-C., *The Lisbon Treaty, A Legal and Political Analysis*, Cambridge University Press, 2010, 318.

⁴⁷ Andoura S., Hancher L., Van Der Woude M., *Towards a European Energy Community: A Policy Proposal*, Notre Europe, 2010, 98.

⁴⁸ Vooren, V. B., Wessel A. R., *EU External Relations Law, Text, Cases and Materials*, Cambridge University Press, 2014, 447.

⁴⁹ Samkharadze I., *Europeanization of Georgia: The Key Legal Aspects of EU Membership*, *Journal "Justice and Law"*, № 5, 2015, 41 (In Georgian).

forms of European norm transfer is the contractual relationships, which directly or indirectly impulse the legal harmonization process.⁵⁰ The dynamics of European normative power in the third countries are mostly tracked by the legal nature of these contractual relationships.

3.2. The Organizational-Institutional Aspects of Approximation of Georgian Energy Legislation to the European Standards

It is an absolute novelty for Georgia to endorse the liberal market model⁵¹ of the European energy legislation targeting on competition rules, anti-cartel agreements and transparency principles. Things are becoming more dynamic when it comes to adaptation and modernization of existing legislation based on the European experience. It was not long ago, when Georgia was facing catastrophic energy crisis, such as severe energy deficit, outdated and amortized infrastructures, massive electricity and natural gas blackouts.⁵²

Harmonizing the legal environment in line with the European values is the key aspect of Georgian Energy Strategy document spelling out key policy directions in the field. Georgia's strive to approximate its legislation to the EU core requirements would be possible to realize with the proper codification to ensure solid and not-fragmented transformation process.⁵³ It is interesting to learn what are the legal instruments in the EU's machinery to facilitate such a transformation process.

Two ways can be identified in this respect: The bilateral and multilateral treaty framework as the legal basis for transplanting the European acts into the Georgian system. EU-Georgia Association Agreement⁵⁴ signed in 2014 and ratified in 2016 and "Energy Community Treaty" - an international agreement, which Georgia joined in 2017. Unlike the political tools,⁵⁵ these two instruments distinguish as the most powerful mechanisms of Georgian energy Europeanization creating the legally binding nature. They can be characterized as interchangeable instruments specifying the concrete agenda of the approximation process.

More specifically, the Association Agreement is a "new-generation" legally binding document, which replaces the Partnership and Cooperation Agreement concluded in 1996 and mandates the harmonization of Georgian legislation with EU laws across a number of sectors. The Agreement is a binding international treaty on Georgia enjoying supremacy over its national laws as long as it does not contradict the Constitution and the Constitutional law of Georgia.⁵⁶

⁵⁰ *Gabrichidze G.*, Legal Approximation to the EU Acquis – a Georgian Perspective in *Kellerhals A., Baumgartner T.(eds.)*, EU Neighbourhood Policy – Survey and Perspectives, Zürich, 2014, 30.

⁵¹ Liberalization can be thought of as a reformist approach, when the hierarchical "top-down" mechanism is replaced by market-based relationships.

⁵² Energy Strategy of Georgia 2016-2025 (working document), See <<http://www.energy.gov.ge/show%-20news%20mediacenter.php?id=600&lang=geo>>.

⁵³ *Kalichava K.*, Strategic Aspects of Environmental Improvement of Georgia, Journal "Journal of Law," № 2, 2012, 11 (In Georgian).

⁵⁴ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. Hereinafter: "Association Agreement" or "AA".

⁵⁵ European Neighbourhood Policy (2003) and Eastern Partnership Initiative (2008).

⁵⁶ *Samkharadze I.*, Harmonization of Legal Systems: EU and Georgia, Journal "Journal of Law," № 1, Tbilisi, 2015, 322 (In Georgian).

Pursuant to the Agreement, Georgia is in the process of aligning its domestic law to European standards in various fields. The energy sector is a crucial aspect of it underpinning an important part of EU-Georgia relations. The Article 297 of the AA defines the general cooperation principles between the EU and Georgia based on the principles of partnership, mutual interest, transparency and predictability, which very much reflects EU's endeavour to support the modernization of Georgia's energy legislation by offering convergence with its rules. This is mostly initiated due to the country's strategic geographic location between key East-West transportation routes, positioning it an attractive alternative for Europe in transporting oil and gas from Central Asia to the European market in ensuring the EU's future energy security.⁵⁷ AA further specifics the concrete EU legal acts (regulations & directives) that need to be implemented in the fields of electricity, natural gas, oil, renewable energy and energy efficiency. In this respect, the AA details the implementation agenda and provides the timeline in which the domestic legislation should be approximated.

Furthermore, Georgia has recently acceded to the "Treaty Establishing the Energy Community" to "endorse" already assumed legal obligations assumed brought by the Association Agreement and to "manifest" the reliable energy partnership with Europe. Energy Community contracting parties are non-EU countries that see some benefit from joining the Energy Community and committing to implement EU energy law into their national systems.⁵⁸ The Accession Protocol lists the number of EU legal acts including the ones described in the first chapter to be aligned by Georgia and defines the specific legal harmonization timeline. Energy Community membership does not engage with the different process as derived from the Association Agreement. It rather supports the established process and further enlarges the scope with potential additional political, technical and financial to incentivize the effective reforms.

This process requires high political leverage and even more. In order to further develop the energy legislation, mirror "repetition" and formal implementation of the European norms are not enough. For this purpose, it is inevitable to employ effective enforcement measures. It is also noteworthy to closely cooperate with Energy Community Secretariat and adopt the action plan putting forward the interim and final results in the light of accountability principles.⁵⁹ The enforcement of rules, rather than simple legal transposition, is a key aspect of EU influence on Georgian domestic energy sector. It may require the establishment of formal institutions and procedures as architected by the EU rules to ensure the smooth implementation.

Furthermore, this should not be confused with the displacement of national laws. On the contrary, domestic law and domestic actors fulfil an equally important function in governing and regulating international energy markets. Transmission of the norm is a legislative activity and it cannot be identified as a translation of the work. "The legal translator" is not limited in this process and supplements, extends

⁵⁷ *Margvelashvili M., Maghalashvili A., Kvaratskhelia T., Ushkhvani L., Mukhigulashvili G., Georgian Energy Sector in the Context of EU Association Agreement, Tbilisi, 2015, 14 (In Georgian).*

⁵⁸ *Wustenberg M., Talus K., Risks of Expanding the Geographical of EU Energy Law, European Energy and Environmental Law Review, 2017, 139.*

⁵⁹ *Janelidze S., A Year Assessment of Georgia's Membership in Energy Community. See European Energy Union and Reforms in Georgian Energy Sector, World Experience for Georgia (WEG), Tbilisi, 2017, 92.*

when necessary and reduces and shortens if necessary and the most important is that in many cases, he/she translates not literally but analyses the article to translate.”⁶⁰

For the sake of proper implementation of EU regulations and directives into Georgian legal system, it is of crucial need to establish competent authorities with effective, independent and transparent regulatory bodies balancing the rights and interests of the different stakeholders on the market.⁶¹ Thus, the final “product” of the harmonized national energy regulatory framework should be consistent legislation with transparent national energy markets and advanced machinery of regulating energy matters. This is why the modern energy regulatory framework should be based on the organizational structure ensuring high competition standards, which are mutually beneficial and reflects the international character.⁶² This would be beneficial for country’s strategic goals in terms of improving the investment environment,⁶³ uncovering transit potential and implementing energy projects.

4. Concluding Remarks

The present paper tried to shed the light on the external effects of EU energy law and its impact on the Georgian legislation. With this aim, the article reviewed the fundamentals of the EU energy law and the potential extension of its geographical scope to spread the liberal, competitive legislation extra-territorially. Pursuing its own rules, the EU is actively engaged in the energy diplomacy to diversify its energy resources. Being “generous” the EU further supports the modernisation of “third countries” energy sector.

Exemplified by the Georgian case, the impact of energy Europeanization in Georgia must not be assessed as very strong, but quite intensive. The implementation of EU energy rules in domestic legal system is an irreversible process, however this process must be accompanied with the high degree of political leverage and real domestic enforcement mechanisms.

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