CHAPTER 8

Old Problems and New Challenges: Will the Energy Union Provide the Answers?

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Abstract

This article will focus on the Energy Union, one of the priority areas of the current European Commission. Specifically, it will examine the question posed by the organisers of an energy and disputes resolution conference in Bocconi, Italy: will the Energy Union provide the answers to the old problems and new challenges of the European Union energy policy? The tentative answer suggested by this article is that it will, in terms of volumes of new initiatives and proposals, it will, but any actual change and impact is uncertain. Within the context of this general theme, the article will discuss the nature of Energy Union and some of the content of its latest proposals for new EU energy law.

1 Introduction

With the progress heading towards this direction for a number of years, the Lisbon Treaty finally abolished the European Community and created the European Union as the only constitutional structure. From an energy perspective, the Lisbon Treaty was of course significant in that it introduced the energy

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specific competence for EU level action. Today, energy is noted as one of the areas of shared competences under Article 4 of Part I of the TFEU.1

Details of this competence are then further defined under Article 194 TFEU. Prior to this, there was no separate legal basis and EU level competence for energy and the progress in this area where mainly driven through the competences for the internal market and for the environment.2 This has of course meant that regulation has focused on areas that can be connected with these two policy areas. The introduction of Article 194 TFEU provides the EU now with a more comprehensive legal base for action in the area of energy. Given the importance of energy industry and energy markets, this is a logical step for the EU. Energy has occupied a central position in the EU from the very beginning and is today one of the top priorities of the current Commission. This central role of energy is also well illustrated by the Commission's Energy Union initiative.

2 What is the Energy Union?

The original idea of an “Energy Union” is a very different animal from the Energy Union that we have today. When it was originally proposed by the Prime Minister of Poland, Donald Tusk, on 29 March 2014,3 the idea of an Energy Union was to build on solidarity (another concept pressed by the Polish government4) and focus on indigenous fuels and security of supply (essentially as response to a security threat posed by Russia). Today, we have an Energy Union that covers most areas of EU energy policy and attempts to rectify most problems we continue to face without any particular emphasis on subject areas.

The Energy Union, one of the flagships of the current Juncker Commission is based on the three objectives of the EU energy policy: security, sustainability and competitiveness. It has five “guiding dimensions” that should help realise

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2 See Kim Talus, Introduction to EU Energy Law (OUP 2016).
4 It has been suggested that this concept was introduced into Article 194 TFEU further to a request made by the Polish Government, primarily relating to the concerns over the security of gas supply from Russia (illustrated in the Russian-Ukrainian / Georgian gas disputes). J.-P. Pielow and B.J. Lewendel, ‘Beyond “Lisbon”: EU Competences in the Field of Energy Policy’, in B. Delvaux, M. Hunt and K. Talus (eds), EU energy law and policy issues (Intersentia 2011) 300.