

Challenges and Legal Solutions for the Energy Crisis within the European Union

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On all levels we are all facing a complex challenge posed by a multi-sectoral crisis. The subject of the present study addresses one of the facets of this contemporary crisis, namely the energy crisis. The identified legal solutions have a common ground for all states and particular notes considering the specifics of each of the states (individual energy situation, sizing of their own production categories, the possibility of resizing their production capacity in the short or medium term, etc.). The "red thread" - the key that runs through the common ideology that I believe must be manifested by all states (competent authorities) must be the reality that today we are all vulnerable captive consumers of electricity, this need being an essential need of modern man.

A present need for studies in the field of energy sector is undoubted, the legal component of such materials being mandatory. The conceptual unity of the measures adopted by the states must go beyond what is desired and be de facto imposed.

Key words: energy, crisis, national solutions, European solutions

I. The imperative of developing the legal norm within the limits imposed by the fundamental principles of law and fundamental human rights

Contemporaries today are facing a crisis specific to our generation and first of all we must be aware individually but also at the national, European and global level that each of the previous generations faced specific crises. The emergence of a crisis, even complex, multidisciplinary, macroeconomic, is not new; the history of mankind is marked by a succession of crises of various natures, the novelty can only be in terms of the content (extent, structure, etc.) of that crisis.

The current European energy crisis does not present a high degree of novelty, it cannot be considered a "surprise" for decision-makers and specialists, it can be surprising for the population, for consumers; sectoral energy crises, not only in Europe, have existed before, the precedent being in measure to give us useful hints for the possibilities of reaction; the reality of the existence of some categories of limited energy resources is known and assumed by mankind, as well as the growing demand for energy at the global level, the limited number of energy sources, the limited number of states with exploited energy potential, etc.

We propose in this study to identify challenges and legal solutions of the current crisis for the states of the European Union, with a preference to establish the legal limits within which it is possible to regulate without bringing serious impacts to our democracy and, at the same time, identifying and applying effective solutions. The extent to which the European Union understands today to elaborate the normative framework for the implementation of the necessary measures in the energy sector, by which to ensure the respect of legal principles and fundamental human rights, is essential for its consolidation internally and externally.

The ideological space for establishing and implementing the necessary measures to minimize the effects of the energy crisis in the EU member states. it is guided by the historical values of European

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democracy. The European Union is today, once again, in the position of taking an exam and the discipline "law" is part of its tests. The limits of action are clearly established primarily through the fundamental principles of law and fundamental human rights, and any "forcing" of these limits can have repercussions that are difficult to anticipate.

The fundamental principles of law (the principle of the supremacy of the law; the principle of legal responsibility; the principle of guaranteeing the freedom, life and integrity of the person; the principle of good faith in the exercise of rights and obligations; the principle of ensuring the legal basis for the functioning of the state; the principle of guaranteeing the freedom and equality of individuals; the principle of equity and justice, etc.) forces a normative reaction under the auspices of good faith, by which to ensure equality between states and between individuals from different states, respectively from the same state. This "equality", however, needs the support of each individual for an effective implementation, to whom it must be proven that this "equal treatment" is not only regarding the "settlement of a liability" but also when "shareholders' dividends" are distributed to the union", because only when we obtain the intimate conviction of the citizen that he is in a partnership do we actually obtain a higher degree of voluntary compliance in relation to the measures ordered and automatically a lower degree of resistance - opposition to the implementation of those measures.

This crisis is therefore a good opportunity for the European Union to seriously analyze and correct its shortcomings from this point of view, in order to be able to request the support of its citizens and obtain their predominantly voluntary participation. Respect for fundamental human rights (respect for human dignity; freedom; democracy; equality; the rule of law; solidarity; non-discrimination) in accordance with the provisions assumed by the Treaty on the European Union² and the Charter of Fundamental Rights of the European Union³ is essential for the legality and efficiency of the implementation of any rule.

II. Legal challenges in the European energy crisis

The challenges raised by the energy crisis in the European Union plan are complex and aim at several levels (economic, social, legal, sociological, etc.) of which the legal one is in turn marked by the degree of cohesion - homogeneity of the member states, by the specificity (the position geo-strategic; the structure and level of natural resource reserves; the degree of industrialization; the level of technology, etc.) of each state so that the dichotomy between challenges specific to each of the states of the union and challenges common to them is a reality.

On the one hand we have the fundamental principles of law and fundamental human rights which are common values of the European Union states and on the other hand we have the energy crisis which is a common challenge.

A Legal challenges specific to EU states.

The "architect" of the normative framework whose object is the necessary measures to counteract the effects of the energy crisis in the European Union plan must have in mind a multitude of criteria but, first of all, he must ensure that he achieves compliance with the fundamental principles of law and of fundamental human rights.

The criteria to be considered include, in an exemplary enumeration:

²https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b4901aa75ed71a1.0020.01/DOC_3&format=PDF

³ <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:12012P/TXT&from=RO>

- the existence of different legal systems of the member states (Romanian or common law systems),
- different national legal provisions;
- the different structure of national energy producers,
- the different weight of the state's participation in the national energy producers;
- ongoing vertical and horizontal contracts regarding energy resources (concession contracts, supply contracts, etc.);
- the structure of the national energy market (if and what percentage is owned by the state);
- specific financial and fiscal provisions (different fee and tax systems);

Apparently, only the complexity of the specific criteria can seem like an insurmountable impediment, but I believe that the "key" can be summed up as "we must reach the same destination together, respecting the same principles" and the idea of own solutions must not generate fear but must be appreciated as proof of adaptability and a clear materialization of the concept of "unity in diversity".

It is interesting to analyze, from state to state, depending on the specific situation, to what extent this energy crisis can be invoked or not as a situation of "foreseeability".

The limitation and insufficient diversification of resources, respectively the increased demand for energy are elements known by all actors, the size of the evolution of these elements has determined a crisis, a state that is already susceptible to be joined to the concept of "unpredictability"; further, the amplitude of the crisis, the solutions for reducing its effects, are elements that can greatly particularize the legal context and can determine a clear inclusion in the category of situations of "unpredictability". The legal effect of this conclusion is fundamental because such a qualification allows the contractors of ongoing energy contracts to invoke unpredictability and to request either the adaptation or the termination of the respective contracts.

B Legal challenges common to the EU states.

"Armed" with common values in the face of a common "enemy" represented by the energy crisis, our states also face common legal challenges such as:

- the need to respect predictability and proportionality (legal security);
- compliance with competition rules;
- compliance with domestic and international legal provisions in the field of classified information (access to information specific to Security areas - energy security);
- respecting modern fundamental human rights (second generation, third generation).

Some ideas are important to remember in terms of respecting the economic, social and cultural rights of contemporary man, for whom respecting these rights means guaranteeing equal access to goods, services and basic socio-economic opportunities.

In this context, we have to answer some essential questions:

- How is our society prepared to qualify the citizen's access to energy?
- How are we, as European citizens, prepared to qualify access to electricity?
- We understand that we are in the presence of a European citizen's right, is the household consumer's need for energy a basic need in the contemporary world?
- Is it necessary to express the right to energy or is the fact that this right derives from other rights sufficient for its recognition?

To the extent that such an essential need, in my opinion, for the contemporary European citizen should be regulated, we would open a "Pandora's legal box" and we can prepare for the regulation of the right to drinking water, the right to a certain air quality, etc. Ofcourse we can take the

reasoning further and raise the problem of access to energy vis-a-vis humans, in general, but I think it is necessary that we, the citizens of the union, clarify this position first, within our own community.

On the other hand, I reiterate the fact that the solutions that are identified for these energy challenges are themselves real challenges for us, lawyers, for citizens, for states.

We consider that the security component of the energy crisis is a common challenge of states with a strong legal side, which leads us to discuss the concept of legal security in the energy crisis. Specific to the security component of the energy crisis is the fact that it can determine an atypical legal-socio-economic reaction mechanism, justified precisely by the security interest; this reality allows the implementation of some radical legal solutions (allowing the substantiation of the expansion of the use of nuclear energy; the nationalization of some producers; the imposition of harsh sanctions for non-compliance with consumption limits, etc.).

The financial-fiscal component of the energy crisis and implicitly the normative changes in this field are very important challenges, common to the states of the union, but the solutions (overtaxing producers, overtaxing suppliers, capping and compensating prices, limiting consumption, overtaxing consumption, etc.) tend to be predominantly individual, dictated by the national regulatory framework and the national structure of the producer-supplier-consumer chain.

III. Viable legal solutions to the European energy crisis.

A General considerations

Legislative power - the national (Parliament, Government), respectively European (Parliament, Council of the European Union, European Commission) has identified and is in the process of identifying some legal solutions for the above-mentioned challenges, more or less radical solutions; solutions that refer to standardization in various fields.

Reality has shown us that in the context of the energy crisis, both individual legal solutions and common legal solutions have been identified. Moreover, initially individual legal solutions, as a result of proven increased efficiency, became individual solutions, respectively, initially joint legal solutions, as a result of poor practical efficiency, were gradually abandoned.

What exactly are the solutions we are talking about? In an exemplary enumeration we identify:

- change of co-contractors, internal and external suppliers;
- change of co-contractors, internal and external producers;
- the reactivation of some energy sources that had previously been included in the category of those that must be abandoned at an accelerated pace (fossil fuels);
- reconsideration of energy sources (nuclear energy⁴);
- the accelerated diversification of energy sources (solar energy, wind energy, nuclear energy);
- overtaxation of producers;
- overtaxation of suppliers;
- elimination of some suppliers from the contractor chain;
- limitation of energy consumption;
- overcharging of energy consumption;
- ceiling on energy prices;

⁴ <https://www.europarl.europa.eu/factsheets/ro/sheet/68/politica-energetica-principii-generale>

“The Treaty establishing the European Atomic Energy Community (Euratom Treaty) serves as the legal basis for most European actions in the field of nuclear energy”.

- compensation of energy prices;
- nationalization of some energy producers;

The varied palette of solutions corresponds to the concrete diversity of the energy situation of the states of the union and, as I have already shown, to the extent that the respective solutions respect the principles of law, fundamental rights, ideological and concrete commitments of the union, they are an effective materialization of the concept of "unity in diversity".

Regarding the measures of a financial-fiscal nature, it is relevant to mention the particularity that, in the states where the state owns the majority packages of producers, respectively energy suppliers, a price ceiling or a profit surcharge generates a significant impact on the budget state. There is also an impact on the budget when the price is capped without compensation (effect on the producer or supplier) or with compensation (exclusive budgetary effect). Thus, we appreciate that it is correct that when measures of a financial-fiscal nature are taken, a fair, balanced bearing of the "price" of this crisis by all its actors (state, producers, suppliers, consumers) should be taken into account; otherwise, significant imbalances are created materialized through the bankruptcy of economic agents and the contraction of the economy, through the decrease in the purchasing power of the consumer and the state's lack of financial levers that would allow it to maintain a decent standard of living of the citizen, etc.

B "Nationalization" versus "unionization"

A very controversial legal solution that I think is mandatory to discuss is "nationalization".

Although nationalization was the first legal solution I thought of at the beginning of the energy crisis, the nationalization of the gas and electricity supplier Bulb Energy⁵ by Great Britain in the fall of 2021 surprised me because of the state from which this measure came. Of course, later on we all expected that first radical step to be followed by other countries as well, such as France's decision in the summer of 2022⁶ regarding the nationalization of Électricité de France (EDF), a giant company in the European energy sector, nuclear producer of electricity and supplier, in which the state had 84% of the shares anyway, was a natural continuation. Just as natural was, in the fall of the current year (2022), the recent decision of Germany against Uniper, more precisely the decision to nationalize 98.5% of the utility company Uniper⁷. Unfortunately, the easiest legal solution does not always produce the most effective long-term results...

The emblem states, the states carrying the European flag are examples for the other states; if these states, with traditional democracies, with capitalist economies throughout their entire history, give in first and resort to extreme measures such as nationalization and invoke as priority the protection of their own citizens, immediately leaving aside the desired common policy and equality of the citizens of the European Union, we are in a point that have some questions us:

- how can we, on a European and Union level, justify the request that the states that have their own natural resources sufficient to fully or substantially ensure their own consumption not to resort to their nationalization to the detriment of ongoing concession contracts?

⁵ <https://www.ziarelive.ro/stiri/furnizorul-britanic-de-gaze-si-electricitate-bulb-nationalizat-fortat.html>

⁶ „French Prime Minister Elisabeth Borne has confirmed that her government plans to fully nationalise electric utility company Électricité de France (EDF) in order to ensure energy security in the country....The Prime Minister said that France has to ensure its sovereignty in the face of the war in Ukraine and the impending colossal challenges.” <https://www.nsenerybusiness.com/news/edf-full-nationalisation-french-prime-minister-elisabeth-borne/>, Elisabeth Borne, Reuters.

⁷ <https://www.nytimes.com/2022/09/21/business/germany-uniper-nationalized.html> “In its latest outlay to secure energy for Europe’s largest economy, the German government on Wednesday announced the nationalization of Uniper, a company responsible for providing more than a third of Germany’s natural gas.”

- how can we justify to the citizens of other states of the union compliance with common European rules in energy matters (limited consumption, limited temperature, etc.) and how can we obtain mainly voluntary compliance with these rules?
- how can we request other states not to take measures of the nature of protecting their own citizens with priority or of the eighth nature for other energy sources (by exploiting non-compliant or non-approved resources; by contracting with non-approved suppliers or producers, etc.)?

"Nationalization" itself is a simple and effective legal solution, in the energy crisis or in any other crisis, considerations such as security (energy security) fully justify such a measure. The problem is that when we are part of a union, such a measure must not only be well correlated with the energy policy at the union level, but also correctly disseminated, explained, announced, in order not to generate a suspicion of unequal treatment, discrimination, dissociation, prioritization of some states or citizens at the expense of other states, etc.

In this context, a way of integrating the nationalization measure into the broader framework of the common energy policy can allow individual concessions to other states, depending on their specifics. As we stated previously, through different methods, respecting common values, we must reach the same result. Some states may opt for nationalization, other states will have individual negotiations with producers or suppliers, other states will renegotiate their own natural resource concession contracts, etc., but the essential thing is that they will all achieve the desired protection of the citizens of the union while respecting common values.

It would be interesting to observe to what extent this growing trend of European nationalization could in a moment be that factor of union "coagulation" that would increase the density of the union. A common measure of "unionization" of some companies by the legal entity the European Union itself would have been proof of a common response, a common policy, a common union front.

The activity regarding the anticipation and minimization of the energy crisis in Europe has been and is supported, as evidenced by moments such as>

- 2015, the Commission published the Energy Union Strategy (COM(2015)0080)
- 2016, the Commission proposed the Clean Energy for All Europeans package (COM(2016)0860).
- 2019, Decision (EU) 2019/504 introduced changes to the EU policy on energy efficiency and the governance of the energy union, in the context of Brexit.
- 2021, the Commission adopted a package of proposals entitled "Achieving the objectives of the European Green Deal"

But, probably, the materialization of such a measure at the union level is too much for the current state of the union, recently emerging from previous crises (economics, migration, war, covid), without having the necessary time to recover.

IV. Conclusions

In conclusion, I believe that the epistemological approach offered by this study allows us to formulate some essential conclusions regarding challenges and legal solutions in the energy crisis. A first conclusion, from legal philosophy, is that the common enemy - the energy crisis, must be defeated with respect for common values (fundamental human rights, general principles of law), even if by using different methods - solutions. The desired, which belongs to the future, is that in

the plan of the European Union we reach a unity of decision and method, but the present allows us to respect common values through different decisions and methods.

Another conclusion would be that regardless the content of the package of measures that is opted for, the effect must be the ensurance of a decent and constant access to energy for the consumer, in the context of a correct distribution of the costs between all the actors involved (union , states, producers, suppliers, consumers). We can discuss to what extent the primary needs of the individual are different from one era to another, but certainly the fundamental rights of the individual must be upgraded over the ages, or, from this perspective, I propose to look to this right to access to energy. In the end, we reiterate the fact that it is essential that during the energy crisis, an increase in the degree of reaction and cohesion in the plan of the European Union, a voluntary compliance of visavis citizens with the available measures, but that, we are not too close to this behavior. The materialization of the principles⁸ of the common European energy policy is essential for the future of our union.

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⁸ <https://www.europarl.europa.eu/factsheets/ro/sheet/68/politica-energetica-principii-generale>. Energy policy: general principles

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