

LESSONS LEARNED — SESSION I: ENERGY LAW AS AN INSTRUMENT TO MODULATE ENERGY MIX AND SECURITY OF SUPPLY

VIII Conference — European and Western Balkans Cooperation in Energy Law

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Moderator: Ms. Branislava Lepotić Kovačević, president of UPES

Keynote speech given by Mr. John M. Roberts, non-resident senior fellow at Atlantic Council's Global Energy Center, who noted that we live in a world with increased disregard for the rule of law.

The question is how to balance security of supply, sustainability of supply and affordability in such circumstances.

Mr. Roberts outlined the importance of law and asked an important question. What is the purpose of law? Is it just the set of rules to promote peace or the principles in which we believe: justice, fairness and democracy.

Energy law, which governs the security of energy supply, cannot be viewed unambiguously through principles or through regulation. Energy law should reflect all the complexity of this area and contain principles and regulations that directly regulate the rules of conduct.

Aleksandar Kovačević, energy economist, Serbia, talked about Geopolitics, risks and economics: Energy Law in the new reality

Mr. Kovačević spoke about transaction costs, happening in fragmented markets.

He concluded that the variable transaction costs in fragmented market means demand for rule of law is low.

The role of energy law in such circumstances are to:

- prevent fragmentation and remove barriers to trade,
- promote unobstructed access to public infrastructure,
- promote free access to seaborne market,
- promote property rights,
- promote reduction in transaction costs,
- distinguish between club goods and public goods.

Ms. Ljiljana Medić, professor, Polytechnics University Madrid, Spain, talked about new energy sources: hydrogen and renewables perspectives

Future of global energy is dominated by declining role of hydrocarbons, growing electrification, rapid expansion in renewables and low-carbon hydrogen.

Ms. Ljiljana Medić addressed one of the core challenges of the energy transition: how to decarbonize sectors where you simply can't plug in a cable.

We've learned about Power-to-X, conversion and storage of electrical energy into an energy carrier or a product. You take renewable electricity, produce green hydrogen, and convert it into practical fuels: ammonia, methanol, synthetic gas, or sustainable aviation fuel, each matched to a specific sector.

EU currently produces almost no green hydrogen and there is a huge gap to meet the 2030 targets. Bottlenecks: only 17% of announced projects are on track, there are cost barriers, infrastructure gaps and demand uncertainty.

She concluded that hydrogen is an added option to substitute fossil fuels.

Mr. Graham Coop, International energy lawyer, London, Brussels, talked about regulatory framework for investments in the Energy Sector (state, private, PPP)

New energy requires new investment, and new investment requires legal frameworks that actually work.

The classical toolkit is customary international law, bilateral treaties, free trade agreements, all giving foreign investors minimum protections and, crucially, access to neutral arbitration against host states.

But that model is under pressure. Investor-state arbitration has faced growing criticism, states are withdrawing from investment protection treaties, and new treaties offer far less arbitral access than before.

The gaps are filled by intergovernmental agreements and host government agreements, tailored deals that address the real concerns upfront: change of law, taxation, environmental obligations, social impact.

The shift is from multilateral protection to negotiated certainty.

With respect to the unintended consequences CBAM, it is designed to prevent carbon leakage and support the 2050 climate neutrality goal, but when calculating the carbon content of imported electricity, the default is the average CO₂ intensity of fossil fuel electricity in the exporting country, not the actual source of the power, so even genuinely

green electricity, exported from a renewable plant, can be treated as dirty, unless very specific conditions are met.

The mechanism that is intended to reward clean energy may, in its current form, penalize it.

Róbert Szuchy, professor of Energy Law, Vice-Rector for Education, Károli Gáspár University, Hungary, spoke about AI in Energy Market: the challenge for Energy Law

AI is, before anything else, an electrical phenomenon – megawatts are drawn from real grids, in real places.

Energy laws are written for different a world. The gap between the two is no longer a matter of detail, but a matter of coherence.

Large scale server farms, as new types of consumers for which the networks are not designed.

They have significantly wider amplitudes of use of electricity and cause greater problems, for instance when there is significant drop in usage.

Rules used now are made in 2016.

The infrastructure will have to be adapted to such consumers, but the questions arise in relation thereto.

How to correctly differentiate users, by thresholds, in public interest - through regulator.

Who will finance the increased costs? There is a principle currently not applied, that who causes the burden pays for it.

Three repairs:

- A technical connection framework,
- Conditionality,
- Cost-causation.

A narrow gap, until 2028 to resolve the issues.