

# Slovenia and South Stream Project: It is difficult to know whether Slovenia can satisfy both the EU and Russia

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Slovenia is planning to build a South Stream Gas Pipeline in collaboration with Russian Energy Giant Gazprom. What would happen if the move does not satisfy EU's rules in the Third Energy Package? Ana Stanic from London's E&A Law Limited talks about solutions and possible sanctions.



[FOTO: Alenka Žumbar Klopčič](#)

Slovenia is under pressure to build the South Stream Pipeline. What can happen if it follows the Bulgarian example where the EU rules are not respected? »It is my understanding that no actual construction has started in Bulgaria,« says Ana Stanic. »The welding of pipes which took place ten days ago in a remote westernmost part of Bulgaria. The way I see it, the final route has not yet been determined and the Bulgarian Ministry of Environment and Water's recent environmental approval is conditional upon the South Stream Bulgaria joint company adopting some 57 measures and complying with nearly 90 recommendations. I understand that public tender bids for the construction of the pipeline have been published recently, so the earliest we can expect construction is early next year,« Stanic has explained.

According to her understanding, Bulgartrans argues that the provisions of the Third Energy Package regarding effective unbundling, certification of Transmission System operator (TSO) and others only apply once a pipeline is constructed. In other words, they do not have to be fulfilled or an exemption sought from them until after South Stream pipeline is constructed. Accordingly they argue the construction of the pipeline itself does not breach EU law. »Their plan is highly risky. Even if their own interpretation of the EU Third Energy Package is correct, its provisions will have to be complied by the time the pipeline is in operation. There is some indication that the third party access would be granted in Bulgaria and that therefore an exemption would not need to be sought under Article 36 of the Gas Directive. It

is, however, unclear how the requirements of effective unbundling and certification would be complied,« says Stanic.

She also commented on the developments in Slovenia. The question is, how Slovenia can satisfy both – Russians and Europeans. »Slovenia had to submit all bilateral agreements in the field of energy it had entered into with non-EU Member States to the European Commission for assessment of their compatibility with EU law in February of this year. Its agreements with Russia concerning South Stream are currently being reviewed by the Commission. Should the Commission find that such agreements breach EU law, it will require Slovenia to take steps pursuant to Article 351 to remove the incompatibilities including by renegotiating such agreements with Russia,« stated Stanic and added: »It is difficult to know whether Slovenia can satisfy both the EU and Russia. Much depends on the terms of the bilateral agreement with Russia, Gazprom's plan and the position taken by the Commission. No doubt Slovenia must ensure that its interests are protected by undertaking a careful analysis of EU and international law.«

Stanic is also clear on the sanctions that can be directed toward an EU Member State if it does not respect the common rules. »If the Commission was of the view that the actions taken by Slovenia or companies operated therein breach EU law it can commence infringement proceedings against the State and put pressure on Slovenian energy regulator to commence proceedings against the companies. Given the position taken by the Commission to date, it is very likely that it would commence infringement proceedings against Slovenia should it find that the agreements signed by Slovenia with Russia were incompatible with EU law or if it determined that Slovenian regulators failed to take measures to stop breaches of EU law by Slovenian companies,« explained Stanic, who is also convinced that, were the Court of Justice of the EU to agree with the Commission, fines are likely to be imposed on Slovenia.