

THE STATE POLICY OF THE RUSSIAN FEDERATION IN MAINTENANCE OF THE FUEL AND ENERGY COMPLEX SUSTAINABLE OPERATION AND DEVELOPMENT UNDER SANCTIONS PRESSURE

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Abstract. The Fuel and Energy Complex of Russia occupies a significant place in the country's economy and plays the role of the basic infrastructure and the generating basis for revenues of the budget system of the Russian Federation and the largest customer for other industries. Since the beginning of the special operation, a whole range of regulations of various levels has been adopted to counter sanctions in the Russian Federation. The mechanisms of anti-sanctions regulation will be improved many times in the near future, and the system of domestic anti-sanctions laws will also be improved. Taking into account the developed measures and changes in target indicators, the Energy Strategy and a number of other strategic planning documents will be subject to adjustment.

At the same time, the energy law should face the challenge to develop the doctrinal approaches to issues of anti-sanctions regulation in the Fuel and Energy Complex.

Keywords: energy law, state energy regulation, legal regulation of the fuel and energy complex under sanctions.

For citation: Shabunya V.V. The State Policy of the Russian Federation in Maintenance of the Fuel and Energy Complex Sustainable Operation and Development under Sanctions Pressure. Energy Law Forum, 2022, Is. 3, pp. 34–39. DOI: 10.18254/S23124350021647-3

A few months ago, the Western world actually declared a war of annihilation on Russia in violation of the established principles of international relations and the provisions of international law, as well as universal norms of morality and humanism.

As V.V. Putin, the Russian President, used to repeatedly emphasize that the collective West is not satisfied with the existence of a strong and independent Russia. According to the majority of authoritative Russian politicians, the alliance should be victorious by disintegrating Russian Federation into many sovereign weak, both economically and militarily, states that do not influence international politics in any way, as well as the loss of signs of national self-identification, culture and faith by the population of Russia.

Right now, unprecedented sanctions pressure on our country, the revision and perverse interpretation of historical events with its participation, the introduction of bans and restrictions on the Russian culture and language in unfriendly countries, as well as the total denial of everything connected with the Russian nation, clearly demonstrates that Russia is victimized by the Western

world as the alleged “cancelling” nation (“cancel culture” from English).

The global degradation and destruction of universal values, economic ties, international institutions and the legislative and legal framework of international relations, including trade, represent a stable trend in the current world. The gross violation of the norms of international law and the unilateral imposition of collective sanctions indicate a sense of exclusivity and impunity on the part of Western countries.

Numerous reservations of Western politicians, including US President Joe Biden, about the fight against the “Putin regime”, indicate attempts of direct Western interference in the sovereignty and political structure of our state.

In this regard, from a legal point of view, the use of unilateral economic sanctions causes fair reproaches in domestic legal science in view of sovereign equal principles of states, non-interference in internal affairs, potential violation of human rights, extraterritorial application of national law, etc. [1].

In this regard, the clear position of our state is reflected in the Foreign Policy Concept of the Russian Federation, which expressly states that the Russian Federation intends to contribute to the exclusion from the practical international cooperation of any illegal unilateral coercive measure taken in violation of the UN Charter and other norms of international law.

In historical retrospect, it should be noted that even in the post-Soviet period, Russia's relations with the West were not always "painless"; however, the adoption of the so-called "Magnitsky Law" in the United States in December 2012 has actually triggered an increasing sanctions pressure on the Russian Federation.

A large package of economic sanctions against Russia began to be introduced after unification of the Russian Federation and the Republic of Crimea in 2014, based on the results of a referendum. Subsequently, the collective West used any ongoing events as a pretext for sanctions against Russia; i.e., the crash of the Malaysian Airlines Boeing 777 over Ukraine, the alleged interference of the Russian special services in the 2016 US presidential election, the construction of the Crimean Bridge, the poisoning of the Skripal family and A. Navalny.

After the Russian Federation launched a special military operation on demilitarization and denazification in the territory of Ukraine, the United States, the European Union and a number of countries that joined them put into effect a significant new sanctions against Russia, including:

- Restrictive measures against the financial and banking system of Russia;
- Restrictions or prohibition on investments in the Russian economy;
- Technological isolation, i.e., a ban on the supply of high-tech products and software;
- Personal sanctions against domestic politicians and businessmen;
- Mass expulsion of Russian diplomats; and
- Ban on flights of Russian airlines over the territory of the European Union and a number of other states.

The Fuel and Energy Complex of Russia occupies a significant place in the country's economy and plays the role of the basic infrastructure and generating basis for revenues of the budget system of the Russian Federation and the largest customer for other industries.

In this regard, one of the key tasks of Western sanctioned pressure on the energy industry is to destabilize its sustainability and development, Russia's withdrawal from international energy markets, deformation of the national economy and a significant deterioration of the living standards of all Russians.

This year, the European Union has implemented the following package of economic sanctions against Russia since February, affecting the energy industry of the Russian Federation:

- Ban on new investments in the Russian energy industry;
- Embargo on the import of coal from Russia to the EU;
- Ban on transactions with Russian listing state-owned companies, which included, in particular, oil companies;
- Ban on the supply of oil and gas production, energy equipment and components for various sectors of the Fuel and Energy Complex of Russia, etc.

The United States and Canada have imposed a complete ban on the supply of Russian gas and petroleum products.

Currently, most EU states are considering the possibility of imposing a full embargo on the supply of energy resources from Russia.

According to high-ranking officials of the United States and the European Union, the purpose of sanctions in the energy industry in the long term is to undermine the basis of the Russian economy, depriving it of the opportunity to receive high incomes from energy exports, significantly slow down the development of the Fuel and Energy Complex of Russia and worsen the social and economic situation of the country's population in order to destabilize the political situation in the Russian Federation.

According to the Analytical Center under the Russian Government, the consequences of sanctions will result in a reduced energy resource production and export, a slow modernization of refineries and investment losses in the energy industry. New sanctions and the withdrawal of a number of companies from the Russian oil and gas industry worsen this issue, in view of the need to develop hard-to-reach and unconventional fields; in addition, the development of liquefied natural gas technologies requires a special focus to prevent excessive "pipeline dependence", which can now become critical [2].

The analysis of the laws of the Russian Federation in countering unilateral sanctions indicates the formation and development of anti-sanctions laws of the Russian Federation in the last decade.

At the same time, as representatives of the research community note, the domestic counter-sanctions mechanism is in the initial stage of its development and has a number of significant drawbacks that do not allow for flexible and timely response to changing social relations, as well as reduce its overall effectiveness [3].

The sources of the Russian anti-sanction laws can be conditionally grouped in the form of two blocks.

1. Laws directly aimed to counter sanctions and to allow to mitigate the negative consequences of sanctions and effectively to oppose them.

It should, first of all, include Federal Law No. 281-FZ dated December 30, 2006 “On Special Economic Measures and Coercive Measures”, which provides for the application of special economic measures in case of cumulative circumstances that require an immediate response to an internationally wrongful act or unfriendly act of a foreign state or its bodies and officials that pose a threat to the interests and security of the Russian Federation and/or violate the rights and freedoms of its citizens, as well as Federal Law No. 127-FZ dated June 4, 2018 “On Measures to Influence (Counter) Unfriendly Actions of the United States of America and Other Foreign States” providing for measures to protect the interests and security of the Russian Federation, its sovereignty and territorial integrity, the rights and freedoms of Russian citizens from hostile actions of the United States and other foreign states.

Also, a bulk of anti-sanction laws is made up of acts of the Russian President and the Russian Government.

For example, Executive Order of the President of the Russian Federation No. 560 dated August 6, 2014 “On the Application of Certain Special Economic Measures to Ensure the Security of the Russian Federation”, Decree of the Russian Government No. 1100–44 dated September 17, 2018 “On the Government Commission for Improving the Stability of the Russian Economy in the Context of Sanctions”.

2. Sectoral laws regulating certain areas of public relations, aimed at ensuring the functioning and development of various sectors of the economy, social protection of the population, as well as improving the efficiency of the public administration system in these areas.

For example, Federal Law No. 57-FZ dated April 29, 2008 “On the Procedure for Making Foreign Investments in Business Entities of Strategic Importance for Ensuring the Defense of the Country and the Security of the State” establishes restrictive exemptions for foreign investors and for a group of persons that includes a foreign investor, with their participation in the authorized capitals of business entities that have strategic significance for ensuring the defense of the country and the security of the state, Law of the Russian Federation No. 2395–1 dated February 21, 1992 “On Subsoil” entitles the Russian Government to decide on the refusal to grant the right to use a subsoil plot for minerals exploration and extraction on a federally important subsoil plot to a legal entity with the participation of foreign investors or a foreign investor, or on the termination of

the right to use a subsoil plot for minerals exploration and extraction on a federally important subsoil plot in the event of a threat to the defense of the country and the security of the state in case of geological exploration of the subsoil under a combined license.

In the research literature, the anti-sanctions laws of the Russian Federation identify three key areas of countering sanctions:

1) Demotivation and increased costs of economic sanctions for those States that have imposed them (sanctioning States);

2) Minimization of the existing negative effect of economic sanctions on the economy and economic entities of the Russian Federation;

3) Reduction of dependence on sanctioning states in critical sectors of the economy, as well as increase in stability and resilience in the face of sanctions restrictions [4].

Considering the issues of state energy policy, firstly, it is required to turn to the definition of “state policy”. Thus, state policy is a system of values, ideas, views reflecting the direction of state activity to obtain a deliberately set result in any sphere of public relations. Goal-setting, planning and summing up in solving the problems posed determine the importance of public policy for the country as a whole [5].

As priorities of the state energy policy of the Russian Federation, the Energy Strategy of the Russian Federation for the period up to 2035, approved by Decree of the Russian Government No. 1523-r dated June 9, 2020 (hereinafter the “Energy Strategy of Russia”), highlights, including, without limitation:

— Guaranteed provision of energy security of the country as a whole and at the level of the subjects of the Russian Federation, especially those located in geo-strategic territories;

— The maximum possible use of equipment that has proof of production in the territory of the Russian Federation;

— Improvement of the efficiency and effectiveness of all levels of management in the sectors of the Fuel and Energy Complex, etc.

It should be noted that the fundamental documents of strategic planning in the field of energy security, the Energy Security Doctrine, approved by Executive Order of the President of the Russian Federation No. 216 dated May 13, 2019 and the Energy Strategy of Russia consider the threats to the country’s energy security that have arisen today as a result of sanctions pressure, and also contain the main mechanisms overcoming them.

Thus, as threats and challenges to the energy security of the Russian Federation, the Energy Strategy of

Russia notes the critical dependence of Fuel and Energy Complex entities on the import of technologies, equipment, materials, services and software in a number of the most promising areas of energy development; a shortage of investment resources, restrictions on the possibility of attracting long-term financing by Fuel and Energy Complex entities from foreign investors and weak development of venture lending; high uncertainty and often unpredictability of external conditions and factors affecting the development of energy, including conditions and factors of international relations.

Taking into account the identified vulnerabilities, the Energy Strategy of Russia determines the following main guidelines for the development of the energy industry of the Russian Federation:

- Achievement of technological independence of the Fuel and Energy Complex and increase in their competitiveness, as well as the acceleration of the technological development of the Russian Federation;

- Coordination of state programs of scientific and technological development of Fuel and Energy Complex industries, programs of innovative development of companies with state participation, as well as fundamental and applied research works performed at the expense of budgetary funds.

The key measures for the innovative development of the Fuel and Energy Complex include the creation of industry competence centers in priority areas of technological development of the Fuel and Energy Complex, the creation of engineering centers and test sites that provide conditions for the introduction of innovative technologies and modern materials in the Fuel and Energy Complex, samples of new equipment and technologies, the creation of testing and certification centers for new products, the development of venture business in innovation and support the commercialization of R&D results in the energy industry, improving the mechanisms of state support for innovative projects, including projects in implementation of “end-to-end” and digital technologies (including platform solutions) in the Fuel and Energy Complex industries, ensuring their accelerated implementation;

In order to diversify energy supplies to the domestic and foreign markets, the Energy Strategy sets targets for the growth of liquefied natural gas production by 2.4 to 3.4 times, the formation of 6 petrochemical clusters, the development of hydrogen production and consumption, ensuring the entry of the Russian Federation into the world leaders in its production and export, the creation of helium production facilities and infrastructure for the transportation of liquid helium in the Far East, the creation of a system for long-term storage of helium and its supply to the world market.

It is important to emphasize that the Energy Strategy provides for flexible adaptation and optimization of energy infrastructure depending on changes in political and economic integration processes and international relations, which is extremely important in the current conditions.

It should be noted that sanctions against the Fuel and Energy Complex of Russia began to be introduced in stages from 2014. Therefore, the energy industry today has turned out to be more ready for tough sanctions pressure from the West, unlike other sectors of the economy, for example, the aviation industry or the automotive industry.

Since 2014, the state policy on import substitution has been consistent and systematic in the Fuel and Energy Complex and power engineering, which makes it possible to ensure the sustainable development and functioning of the Fuel and Energy Complex of Russia. Thus, according to the Russian Ministry of Energy, only in 2019, companies in the Fuel and Energy Complex and related sectors of the economy implemented more than 60 projects within the import substitution [7].

In his interview, Deputy Prime Minister of the Russian Government A.V. Novak explained that currently, in order to overcome sanctions in the Fuel and Energy Complex, the Government of the Russian Federation faces two key objectives: ensuring the stable operation of the Fuel and Energy Complex, the domestic market, preventing the rise in prices for fuel, electricity and heat energy above inflation, as well as maintaining the export potential and ensuring the receipt of funds in the country’s budget through the export of energy resources.

Taking into account the fulfillment of those tasks, the Minister of Energy of the Russian Federation N.G. Shulginov announced a set of priority anti-sanction measures in the Fuel and Energy Complex [7].

As the minister noted, work continues to replace imported products in the Fuel and Energy Complex, a list of critical equipment and components, technologies, electronic component base and specialized software required for the implementation of investment programs in the Fuel and Energy Complex has already been compiled, domestic manufacturers have launched the production of large and medium capacity turbines. A separate objective of the Fuel and Energy Complex at this stage is the debugging of logistics, including the “gray scheme” for the supply of imported equipment, now these issues are being actively worked out with countries friendly to the Russian Federation.

In the electrical energy industry, the Russian Government is expected to be authorized to review in 2022 sanctions for incomplete fulfillment of obligations, including for the postponement of the commissioning of grid and generating facilities, not to apply a negative adjustment of the tariffs of grid companies for non-fulfillment of investment programs in 2022–2023, which will ensure

the financial stability of the activities of participants in the wholesale and retail electrical energy and capacity markets. It is also proposed to simplify procurement procedures, which will minimize the risks of disrupting the supply of fuel and equipment for generation. In terms of putting generating equipment into repair, it is proposed to assign the technical managers of enterprises with the right to decide on the repair of the equipment according to a simplified procedure, as well as to adjust the repair schedules of generating and grid equipment in coordination with the System Operator of the UES of Russia.

In the oil products market, it is proposed to set a delay in the terms of modernization of oil refineries to receive tax deductions, in the future, measures will be considered to reduce penalties for burning associated petroleum gas and using fuel oil, the possibility of expanding the range of goods allowed for sale at gas stations is being considered. The issue of granting the Government of the Russian Federation the right to set the amount of deductible expenses for calculating the tax on additional income from the extraction of hydrocarbons is also being considered.

It is proposed to change the calculation of indicative prices for the mineral extraction tax to take into account real price conditions in the market, in order to eliminate the overpayment of tax by oil companies, due to the fact that the oil of the Russian export grade Urals is traded at a discount to Brent.

In the coal industry, it is expected to stabilize the situation in logistics and develop a program for import substitution of mining equipment.

Since the beginning of the special operation in the field of countering sanctions in the Russian Federation, a whole range of regulations of various levels has been adopted.

In particular, Federal Law No. 127-FZ dated May 1, 2022 was adopted in the Fuel and Energy Complex, which gives the Russian Government the authority until the end of 2022 to determine the specifics of accrual, payment and write-off of penalties (fines, penalties) and the application of other liability measures for non-fulfillment or improper fulfillment of obligations:

— In gas supply, on payment for gas and services for its transportation;

— In heat supply, to pay for heat energy (capacity) and/or heat carrier supplied under heat supply contracts, contracts for the supply of heat energy (capacity) and/or heat carrier, contracts for the provision of services for the transfer of heat energy, heat carrier;

— In electrical energy industry, the Russian Government until December 31, 2022 is entitled to establish the specifics of accruing, paying and writing off fines

and applying other measures of responsibility for non-fulfillment or improper fulfillment of obligations in the wholesale and retail markets, conducting competitive procedures in the wholesale electrical energy and capacity market, as a result of which capacity supply contracts are entered into, as well as the specifics of the execution of those contracts, including those providing for a change in the start and/or end dates of capacity supply.

An important mechanism for countering sanctions is the transfer of settlements with EU countries for supplied energy resources into Russian rubles. According to Deputy Prime Minister of Russia Alexander V. Novak, about half of the 54 foreign companies that buy gas from Gazprom have opened accounts in Gazprombank [8].

To date, the Russian Government is actively working to find new consumers, the result of which should be the redirection of the volume of oil to new markets in the Asia-Pacific region, from where it can also come to European consumers, but at a much higher price.

In conclusion, it should be noted that to date, only urgent measures have been taken in the Russian Federation in the field of countering sanctions, given the very short time frame for preparing a response. Most anti-sanctions measures are currently being worked out in detail and systematically by the Russian Government, the Central Bank of Russia and other competent authorities. A number of measures are not specifically disclosed in order not to disturb our Western “partners” prematurely.

The mechanisms of anti-sanctions regulation will be improved many times in the near future, and the system of domestic anti-sanctions laws will also be improved. Taking into account the developed measures and changes in target indicators, the Energy Strategy and a number of other strategic planning documents will be subject to adjustment.

At the same time, the energy law should face the challenge to develop doctrinal approaches to issues of anti-sanctions regulation in the Fuel and Energy Complex. As V.V. Romanova rightly notes, despite the active development of laws in energy security, the improvement of international regulation in this area, many issues deserve special attention, as well as deserve to be the subject of comprehensive legal research [9], and emphasizes that energy security is a key category for energy law, since its legal support indicates compliance with the basic principles of energy law. [10]

In this regard, the current challenge of energy law is the formation of an effective regulatory legal framework that ensures the sustainable functioning and progressive development of the Russian Fuel and Energy Complex in conditions of prolonged international confrontation.

REFERENCES

1. Gevorgyan, K.G., “Unilateral Sanctions” and International Law. *International Life*, 2012, No. 8. Available at: <https://interaffairs.ru/jauthor/material/720> (Accessed January 28, 2021).
2. Available at: <https://ac.gov.ru/publications>
- 3-4. Starzhenetsky, V.V., Butyrina, V.A., Kuritsyna, K.S. Russian Anti-Sanctions Regulation: Current State and Ways of Improvement. *Law*, 2021, No. 3, pp. 119–142
5. Luneva, E.V., State Policy in Ensuring Rational Use of Natural Resources. *Lex Russica*, 2018, No. 12, pp. 67–82
6. Available at: <https://minenergo.gov.ru/node/7693>
7. Available at: <https://kodeks.ru/news/read/minnergo-razrabotalo-antikrizisnyy-plan-dlya-tk>
8. Available at: <https://www.kommersant.ru/doc/5357104>
9. Romanova, V.V., Energy Security: National Laws and International Legal Regulation. *Russian Justice*, 2014, No. 2, pp. 15–17
10. Problemy i zadachi pravovogo obespecheniya energeticheskoy bezopasnosti i zashchity prav uchastnikov

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Received 24.05.2022

Revised 21.07.2022

Accepted 29.08.2022