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PROBLEMS AND TASKS OF LEGAL REGULATION OF COMMON ENERGY MARKETS OF THE EURASIAN ECONOMIC UNION

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Abstract: Gradual formation of the common energy markets of the Eurasian Economic Union includes development and coordination of indicative (forecast) balances of gas, oil, and oil products of the union. The common energy market is formed step by step on the basis of electric power systems operating in parallel. The Treaty on the Eurasian Economic Union also provides for development of concepts and programs for the formation of the common energy markets. Upon completion of activities under the programs, the parties shall conclude international treaties: on the formation of a common electric power market, which shall include, among other things, uniform rules for access to services of natural monopoly entities, on the formation of a common gas market containing, among other things, uniform rules for gas transmission systems located in the territories of the member states, and on the formation of common markets of oil and oil products containing, among other things, uniform rules for access to the systems for transportation of oil and oil products. Certain work has already been done. The member states have currently developed and ensured approval by the Supreme Eurasian Economic Council of the Concept for the Formation of a Common Electric Power Market; the Concept for the Formation of a Common Gas Market, and the Concept for the Formation of the Common Markets of Oil and Oil Products.

One of the most difficult tasks for preparation of relevant international treaties is to handle work on unification of uniform rules for access to services of natural monopoly entities. It should be taken into account that national legal regulation of relations concerning transmission and transportation of energy resources of the member states is different. For the development of uniform rules, thorough legal analysis of the laws of the member states of the Union and determination of the best provisions for incorporation into the uniform rules will be required. The article outlines possible provisions for incorporation into the uniform rules for access to the gas transmission systems that can also be included into the uniform rules for access to the systems for transportation of oil and oil products and used upon development of the uniform rules for access to services of natural monopoly entities in the electric power industry.

Keywords: energy law, international legal regulation in the electric power industry, common energy market of the Eurasian Economic Union.

At the scientific and practical conference devoted to the Analysis and Prospects of the Fuel and Energy Complex of the Member States of the Eurasian Economic Union

in the Field of Energy Security, Energy Saving, Energy Efficiency, and Ecology, it was noted that creation of common markets will contribute to the uninterrupted energy supplies to the countries

of the Union, and it was stressed that the member states develop long-term mutually beneficial cooperation in the energy sector and implement coordinated energy policy as a part of the phased development of the common energy markets. [1]

Difficulties and disagreements in the work of forming the legal framework for the common energy markets result from the fact that some countries act mostly as suppliers, while others are consumers of energy resources. [2]

The Eurasian Economic Commission (EEC) together with the member states and the business community of the Eurasian Economic Union (hereinafter referred to as the Eurasian Economic Union, the EAEU, the Union) identified the existing obstacles on the domestic market of the Eurasian Economic Union, which were reflected in the *Barriers, Exemptions and Restrictions of the Eurasian Economic Union* report, the so-called White Book. [3]

In the *Energy Policy* section of the White Book, it is noted that the energy markets form about 30% of the total turnover within the Union and, accordingly, are significant for the mutual trade of the member states; supply of energy resources is a significant factor that influences the development of the national economy both for the exporting and the importing countries.

Among the barriers and exemptions in the energy sector, the White Book distinguishes the lack of unified and transparent approaches to determining technical capabilities of systems for transmission of oil, oil products, and gas located in the territories of the member states, the lack of unified and transparent approaches to determining the technical capabilities upon transmission of electricity in the territories of the member states, and the lack of unified rules for access to energy infrastructure.

Participants of scientific events and representatives of the Saint Petersburg International Mercantile Exchange (SPIMEX) also emphasize that the key component of the common gas market, and the common market of oil and oil products will be exchange trade; it is noted that there is every reason for development of exchange trade under the conditions of already functioning gas transmission system of the gas market of the

EAEU, the potential of the market of oil products is also estimated as high. [4]

Current legal bases for the formation of the common energy markets of the Eurasian Economic Union are envisaged in Section XX of the Treaty on the Eurasian Economic Union, Annexes Nos. 21, 22, and 23 of the Treaty. Paragraph 1, Article 79 of the Treaty on the Eurasian Economic Union specifies the basic principles for the formation of the common energy markets including: ensuring market pricing for energy resources, ensuring development of competition in the common energy markets, lack of technical, administrative and other barriers to trade in energy resources, relevant equipment, technologies and related services; ensuring development of transportation infrastructure of the common energy markets; ensuring non-discriminatory conditions for business entities of the member states in the common energy markets; creation of favorable conditions for attracting investments in the energy complex of the member states, harmonization of national norms and rules for functioning of the technological and commercial infrastructure of the common energy markets.

The barriers identified by the Eurasian Economic Commission do exist, which results from differences in the current models of legal regulation of the energy markets of the member states and certain gaps in international legal regulation.

Current models of legal regulation in such energy industries as gas, oil, and electric power industries have common features and differences.

Thus, according to the laws of the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation, and the Kyrgyz Republic, transportation of oil and oil products through trunk pipelines is referred to the natural monopolies. In the Republic of Armenia, it is not the case.

Services for gas transportation through pipelines as well as services for transmission of electric power are referred to the natural monopolies in accordance with the laws of all member states of the Union.

At the same time, in accordance with the laws of the Republic of Kazakhstan, the natural monopolies also include services for storage

and transportation of commercial gas through gas links, trunk pipelines and (or) gas distribution systems, operation of group tank units, and transportation of crude gas through gas links. [5] According to the laws of the Republic of Armenia, the natural monopolies also include services for distribution of natural gas; services of the operator of the gas supply system. Pursuant to the laws of the Kyrgyz Republic, the natural monopolies also include distribution, storage, and sale of natural gas. [6] Moreover, under the laws of the Republic of Belarus, the Republic of Kazakhstan, and the Kyrgyz Republic, the natural monopolies also include distribution of electric energy.

Therefore, it is rather difficult to determine the criteria for harmonization of the laws of the member states in the electric power industry, which is considered to be one of the basic principles for the formation of the common energy market pursuant to Protocol No. 21 to the Treaty on the Eurasian Economic Union.

Ensuring by the member states of unification of regulatory and technical documents regulating functioning of gas transmission systems located in the territories of the member states as provided for by Protocol No. 22 to the Treaty on the Eurasian Economic Union is equally challenging.

The Treaty and the Protocols (Nos. 21, 22, and 23) specify the principle of prioritized satisfaction of the domestic needs of the member states for energy resources, which is quite fair.

All three Protocols (Nos. 21, 22, and 23) specify that the obligations to transport energy resources are fulfilled within the limits of technical capabilities.

The reference to the need to unify the definitions of the limits of technical capabilities in the White Book seems to be well founded.

Gradual formation of the common energy markets includes: development and negotiation of indicative (forecast) balances of gas, oil, and oil products of the Union. The stage-by-stage formation of the common energy markets is carried out on the basis of electric power systems operating in parallel. The Treaty on the Eurasian Economic Union also provides for development of concepts and programs for the formation of the common energy markets. Upon completion of the activities under the programs, the parties

shall conclude international treaties: on formation of the common electric power market, which shall contain, among other things, the unified rules for access to services of natural monopoly entities, on formation of the common gas market containing, among other things, the unified rules for gas transmission systems located in the territories of the member states, and on formation of the common markets of oil and oil products containing, among other things, the unified rules for access to systems for transportation of oil and oil products. For the common electric power market, it is envisaged that these international treaties shall come into force prior to July 1, 2019, for the common markets of gas, oil and oil products, on or before January 1, 2025.

Certain conceptual structure with regard to the energy transportation infrastructure and the parties to relations for transfer and transportation are provided for by the approved Concept for the Formation of Common Markets of Energy Resources. The member states have currently developed and ensured approval by the Supreme Eurasian Economic Council of the Concept for the Formation of a Common Electric Power Market; the Concept for the Formation of a Common Gas Market, and the Concept for the Formation of the Common Markets for Oil and Oil Products.

Herewith, it should be taken into account that national legal regulation of relations concerning transmission and transportation of energy resources of the member states is different. Upon development of uniform rules, thorough legal analysis of the laws of the member states of the Union and determination of the best provisions for incorporation into the uniform rules will be required.

The basic provisions for the uniform rules for access to the services of natural monopoly entities performing transfer and transportation of energy resources are specified in Annexes Nos. 21, 22, and 23 to the Treaty on the Eurasian Economic Union.

Thus, legal analysis of the provisions of Annex No. 22 to the Treaty on the Eurasian Economic Union makes it possible to conclude that the uniform rules for access to the gas transmission systems may include without limitation the following provisions:

- a conceptual structure that includes definition of the concept of gas, peculiarities of the legal regime of gas as an object of relations for supply, transportation, and storage, and the requirements for its metering. Regulations on the procedure for adoption, amendment, and cancellation of norms and standards for gas of the member states;

- definition of the concept of the gas transmission system, peculiarities of the legal regime of the gas transmission system including as an object of design, construction, real estate, hazardous production facility;

- provisions on the procedure for adoption, amendment, and cancellation of normative technical documents regulating functioning of the gas transmission systems;

- provisions of the status of the parties to the relations for transportation of gas through the gas transmission systems;

- the procedure for conclusion, performance, and termination of service agreements for gas transportation;

- the procedure for determination of price and the settlement procedure;

- liability for violation of the terms and conditions of the service agreements for gas transportation;

- pre-judicial and judicial procedure for settlement of disputes relating to conclusion of the service agreements for gas transportation;

- provisions on customs and tariff regulation;
- requirements to ensuring environmental safety and liability for their violation.

It seems that these provisions can also be incorporated into the uniform rules for access to the systems for transportation of oil and oil products and used upon development of the uniform rules for access to services of natural monopolies in the electric power industry.

At the scientific and practical round table Legal Regulation of Energy Markets within the framework of the Moscow Legal Week, participants of the round table and representatives of the EEC Energy Department noted that upon discussion of the tasks of forming common energy markets, issues of legal nature of the documents planned to be adopted upon implementation of the Concepts for the Formation of the Common Markets of Energy Resources are raised. [7]

Thus, according to the Concept for the Formation of a Common Gas Market of the Eurasian Economic Union, the first stage of the formation of the common gas market of the Union (until 2020) is characterized, among other things, by development and negotiation of the uniform rules for access to the gas transmission systems located in the territories of the member states, establishment of the procedure for implementation of exchange trade in gas in the common gas market of the Union approved by the authorized agencies of the member states. The second stage of the formation of the common markets of oil and oil products of the Union (2018 to 2023), in accordance with the Concept for the Formation of the Common Markets of Oil and Oil Products of the Union, provides for development of the uniform rules for access to systems for transportation of oil and oil products located in the territories of the member states. The second stage of the formation of the common electric power market of the Union (Q3 and Q4 of 2016 to Q1 and Q2 of 2018), in accordance with the Concept for the Formation of a Common Electric Power Market, includes, among other things, development of the uniform rules for access to services of natural monopoly entities in the electric power industry.”

These issues become the subject of legal discussions and research more and more often. [8]

According to paragraph 1, Article 6 of the Treaty, the Law of the Union is formed by: the Treaty on the Eurasian Economic Union; international treaties within the Union; international treaties of the Union with a third party; resolutions and orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, and the Eurasian Economic Commission adopted within the framework of their powers stipulated by the Treaty on the Eurasian Economic Union and international treaties within the framework of the Union.

All three Concepts contain a section, which defines deeds regulating the common markets of energy resources.

According to the Concept for the Formation of a Common Electric Power Market of the Union (Section XII), the system of deeds

regulating the common electric power market is formed by: the Treaty, an international treaty on formation of the common electric power market containing, among other things, the uniform rules for access to services of natural monopoly entities in the electric power industry and determining the functioning of the entities of the common electric power market of the Union and developed in accordance with the program for the formation of the common electric power market of the Union.

Similar wording is provided for in Section XII of the Concept for the Formation of the Common Markets of Oil and Oil Products of the EAEU.

The list of deeds regulating the common gas market of the Union in accordance with Section XI of the Concept for the Formation of a Common Gas Market also contains a reference to the regulations of the member states.

Herewith, according to the provisions of all three of the above Concepts, the deeds of the Union bodies developed in accordance with the Programs for the Formation of the Common Energy Markets and regulating the activity of the entities of the relevant markets refer to the deeds regulating common relations in the common markets of energy resources.

At the same time, as mentioned above, according to Article 104 of the Treaty on the Eurasian Economic Union, the international treaties on formation of the common electric power market of the Union shall contain, among other things, the uniform rules for access to services of natural monopoly entities in the electric power industry, an international treaty on formation of the common gas market of the Union shall include, among other things, the uniform rules for access to gas transmission systems located in the territories of the member states, an international treaty on formation of the common markets of oil and of oil products of the Union shall contain, among other things, the uniform

rules for access to the systems for transportation of oil and oil products located in the territories of the member states. In these circumstances, these deeds as well as other deeds developed in accordance with the programs for the formation of the common markets of energy resources upon conclusion of the specified international treaties will actually form an integral part of these agreements either in the form of a specific section or as annexes to these treaties. Consequently, as independent deeds, these rules and other deeds will be valid for a certain period until conclusion of international treaties on formation of the common energy markets.

This situation is typical for Annexes Nos. 21, 22, and 23 to the Treaty on the Eurasian Economic Union, which, according to paragraphs 8, 9, and 10 of Article 104 of the Treaty on the Eurasian Economic Union, remain valid for a certain period, until the international treaties on formation of the common energy markets come into force.

It seems that in addition to the provisions of international treaties defined in Article 104 of the Treaty, Annexes 21, 22, and 23 to the Treaty and containing the rules for access to services of the natural monopoly entities, for legal regulation of the common markets of energy resources, it is also necessary to unify and integrate into international treaties on formation of the common energy markets provisions for the accounting of supplied, transported, and transferred for storage energy resources, requirements to the meters, their verification, operation, and decommissioning, ownership of the meters, and requirements to their installation. It is also practical to consider unification of the rules for distribution of risks in the event of emergencies, insurance of hazardous production facilities of the energy infrastructure, rules for ensuring the antiterrorist protection of fuel and energy complex facilities for the member states of the Union, and provisions on liability for their implementation. ■

Reference List

1. Analysis and Prospects of the Fuel and Energy Complex of the Member States of the Eurasian Economic Union in the Field of Energy Security, Energy Saving, Energy Efficiency, and Ecology Scientific and Practical Conference ; Market of Oil Products of the Russian Federation-2017 International Conference ; //http://www.eurasiancommission.org/ru/act/energetikaiinfr/energ/Pages/activity.aspx
2. Speech of K.V. Molodtsov, Deputy Minister of Energy of the Russian Federation, at the XVth International Forum Gas of Russia – 2017 // http://www.eurasiancommission.org/ru/act/energetikaiinfr/energ/Pages/activity.aspx