THE LEGAL REGULATION OF THE USE OF RENEWABLE ENERGY SOURCES UNDER THE LAWS OF THE EURASIAN ECONOMIC UNION MEMBER STATES

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The issues of the legal regulation of renewable energetics in the EAEU member states are of interest as renewable energy sources (RES) are playing an increasing role in the energy sector of these states. Sufficient attention should be paid to the problems of unification of statutory acts of the EAEU members related to renewable energetics taking into account ambitious plans of integration in the sphere of energetics including the creation of common markets of electrical energy, oil and gas.

Today, all EAEU member states have legal acts encouraging commissioning of RES facilities but apply various mechanisms of such encouragement. This is determined not only by legal reasons, but also by economic ones, namely, the status of the fuel and energy complex and the energy balance in each of the EAEU member states.

Keywords: *energy law, energy law of foreign states, legal regulation of the use of renewable energy sources.*

The Eurasian Economic Union member states have a well-developed system of legal acts regulating the relationships of the use of renewable energy sources. Each state has adopted strategic planning documents, separate acts on the use of renewable energy sources on the legislative level, and regulations. It should be noted that the adoption of the corresponding laws separately regulating the use of RES took place in all EAEU states except for the Russian Federation before the entry into force of the main Eurasian economic integration documents, i.e. from 2004 to 2010. The development of the legal framework in each of the EAEU member states in continuing. [1]

Thus, a study and an analysis of the main provisions of statutory acts of the EAEU member states can show tendencies of the development of the use of renewable energy sources and identify the provisions that can be used in the national laws of the Russian Federation.

Besides, researchers note that the EAEU has a deficiency of common unified documents on the legal regulation of the use of renewable energy sources, [2] thus, the analysis of laws of the EAEU member states becomes especially

relevant from the standpoint of unification of laws of the EAEU member states.

Armenia

Today, it is the Republic of Armenia that has the oldest applicable legal act on renewable energetics of all EAEU member states, Law of the Republic of Armenia No. HO-122-N of November 9, 2004, On Energy Saving and Renewable Energy. According to Art. 1 of this law, its goal is the determination of state policy principles on the implementation of energy saving, the development of renewable energy sources and mechanisms of their implementation aimed at: consolidation of the economic and energy independence of the Republic of Armenia; raising the level of the economic and energy security of the Republic of Armenia, reliability of the energy system; energy saving; the creation of new products facilitating the development of renewable energetics; the organization of services; the reduction of man-made impact on the environment and human health.

Article 2 of the Law gives a definition of renewable energy sources understood as the aggregate of energy sources from renewable energy sources of wind, sun, water, geothermal energy, biomass that may be consumed. It is further stated that renewable energetics is the area focusing on obtaining energy out of renewable energy sources. Article 5 lists, in its turn, the state policy principles, among which one should highlight the following: the creation and application of legal and economic mechanisms facilitating the development of renewable energetics; the assurance of the growth and development of the use of renewable energy sources and the use of new technologies facilitating this process; the assurance of the effective (economical) use of natural resources and protection of the environment by the measures aimed at the development of renewable energetics; encouragement of cooperation between autonomous energy producers using renewable energy sources with the electrical power system on the conditions of electrical energy exchange; the implementation of state (national) target energy saving and renewable energy source programs. [3]

Among the areas of state management of RES, the development, adoption and implementation of state (countrywide, targeted) programs in the sphere of renewable energy sources; the assurance of the development and implementation of economic and legal mechanisms facilitating priority and effective use of own renewable energy sources in the legally established procedure; financing, organization of trainings, support of international cooperation, are worth noticing. The provisions of great importance are the ones in Art. 20 of the Law, the "transitional provisions", establishing the application of 0% customs duty on import of the required equipment; the small hydro-electric power station development pattern (including in part of simplification of the process of obtaining land tenure rights and other required permissions); the implementation of a long-term tariff policy facilitating the accelerated development of renewable energetics and ensuring the implementation of principles established by Art. 5 of the Law. Finaly, the annex to the Law describes the mechanism of electrical energy exchange (flow) between autonomous producers and distributing organizations establishing the guarantees of payment for electrical energy generated by autonomous producers and compensations to autonomous producers.

Among the strategic planning documents in the Republic of Armenia, the Strategic Plan of the Energy Sector Development in the Republic of Armenia (until 2040) approved by Resolution of the Government of the Republic of Armenia No. 650-Л of May 16, 2019, is worth noting. This document highlights the importance of the maximum use of the potential of renewable energetics provided that it constitutes a part of the plan of the development of production capacities of electrical energy at minimum costs and is the key priority of the development of the energetics sphere. The construction of solar energy stations is the most economically beneficial for Armenia taking into account the available resources and the world tendencies of the development of this technology, and it will be a priority as compared to other energy sources considering the limitations caused by the system reliability and security indices. [4]

The strategy is planned to be updated every two years, proclaims the opportunity to receive more effective solar energy stations and reach the target 10% share of the solar energetics in the energy balance within a shorter period of time considering the scientific and technical progress (the Government of Armenia now intends to raise the share of solar energy production up to 10% in the total volume by 2026, which means 1.2 billion kW*h of electrical energy from solar energy stations that in aggregate requires 700 MW of the created capacity of solar energy stations, including autonomous stations).

Besides, provisions on renewable energetics can be found in Law of the Republic of Armenia No. HO-148 of March 7, 2001. Art. 59 of this law states that all electrical power (capacity) generated by small hydro-electric power stations using renewable energy sources is subject to obligatory purchase pursuant to the market requirements within fifteen years from the entry into force of the electrical power (capacity) production license.

Finally, various executive government authorities of the Republic of Armenia are responsible for the secondary legislation. According to the information posted on the website of the Ministry of Energy of the Republic of Armenia, the Social Service Regulation Commission approved the tariffs for solar power stations with the capacity below 5 MW (inclusive) and above; wind energetics (below and above 30 MW); electrical energy produced by small hydro-electric power stations built on natural watercourses; electrical energy produced by small hydro-electric power stations built on irrigation systems; electrical energy produced by small hydro-electric power stations built on drinkable water courses by Resolution No. 159-H of May 29, 2019, for the period from July 1, 2019, to July 1, 2020.

Belarus

Statutory acts regulating the use and state support of renewable energetics exist in Belarus in the form of laws, presidential decrees, resolutions of the Council of Ministers, acts of executive authorities.

The main legal act regulating renewable energetics is Law of the Republic of Belarus No. 204-3 of December 27, 2010, On Renewable Energy Sources. [5] The Law defines the main RES terms; state policy principles, state regulation areas and public entities implementing the state policy in the RES sphere, including the President of the Republic of Belarus, the Council of Ministers of the Republic of Belarus, the State Standardization Committee of the Republic of Belarus, the Ministry of Energy of the Republic of Belarus and other authorities.

Article 16 of the Law establishes the rights of producers of energy based on RES, among which there are the right to the guaranteed connection of RES use installations to the state energy networks; the guaranteed purchase of all proposed energy produced based on RES and supplied to the state energy networks and the payment for such energy by state energy supplying organizations under the tariffs set by the Law; the state support in accordance with the laws. According to Article 17 of the Law, producers of energy based on RES are responsible for separate accounting of the energy produced based on RES and such energy sold to state energy supplying organizations; the provision of accurate information on the energy produced based on RES.

State support measures set by Article 18 of the Law are also further developed in other legal acts of the Republic of Belarus. Thus, Clause 1.16 Article 119 of the Tax Code of the Republic of Belarus establishes value added tax exemption for the import of RES installations, components and spare parts to the Republic of Belarus (the goods need to be acknowledged as such by the Energy Efficiency Department under the State Standardization Committee of the Republic of Belarus). Apart from tax benefits, other state support measures include the price policy forming, encouragement of investment activities. Art. 20 of the Law sets multiplying coefficients in respect of the tariffs on energy produced based on RES for the first ten years from the date of commissioning of a RES installation.

The provision of Art. 23 of the Law on accounting of renewable energy sources and RES installations deserves separate attention. The Republic of Belarus maintains a state RES register containing data on the current

and potential RES installation sites, producers of energy based on RES, used RES types, capacities of RES installations and other data. The state register of renewable energy sources is maintained by the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus. The official website of this agency has an interactive map showing all operating RES installations and the ones planned to be launched. It is possible to view reports on the use of RES across the Republic of Belarus or in separate areas by various parameters (electrical energy release, coal equivalent economy, reduction of greenhouse gas emission, heat capacity and many others) and RES types: wind energy, water energy, solar energy, biogas energy, biomass energy. [6] These reports are very informative and representative: they may be used to assess what RES types are developed to a greater and to a lesser extent. The state RES register website also has a list of statutory acts of the Republic of Belarus regulating RES. Twelve resolutions of the Council of Ministers of the Republic of Belarus, two Decrees of the President of the Republic of Belarus are listed in addition to the above-mentioned Law and the Tax Code.

The Republic of Kazakhstan

Resolution of the Government of the Republic of Kazakhstan No. 724 of June 28, 2014 approved the Concept of the Development of the Fuel and Energy Complex of the Republic of Kazakhstan until 2030 (hereinafter referred to as the "Concept") stating the existence of a number of prerequisites for the active development of RES in the Republic of Kazakhstan: firstly, the need for the improvement of the environmental situation and the reduction of polluting substance emission volumes. Thus, the Republic of Kazakhstan is among the top three countries by volume of greenhouse gas emissions per unit of GDP; secondly, the adopted Concept of Transfer of the Republic of Kazakhstan to "Green Economy" stipulates the production of 30% of electrical energy based on RES and alternative energy sources by 2030 and 50% by 2050. [7]

Law No. 165-IV of July 4, 2009, On Support of the Use of Renewable Energy Sources is currently in effect in the Republic of Kazakhstan, inter alia, for the achievement of tasks set in the RES sphere. [8] Art. 1 of the Law mentions such RES as solar energy, wind energy, hydrodynamic water energy; geothermal energy: heat of soil, ground waters, rivers, water basins and anthropogenic sources of primary energy resources: biomass, biogas and other fuel out of organic waste used to produce electrical and/or heat energy.

Among the aims and forms of the state regulation of support of the RES use in Kazakhstan, it's worth noting setting of fixed tariffs and maximum auction prices on electrical energy based on RES, provision of targeted assistance, approval and implementation of the RES facility location plan taking into account performance targets of the RES sector development.

The Law establishes the competence of the Government of the Republic of Kazakhstan, the authorized agency, the Ministry of Energy of the Republic of Kazakhstan and the competence of local executive authorities of regions, cities of republican status and the capital.

The following measures of legal regulation of the RES use are worth mentioning:

— The fixed tariffs approved by the Government of the Republic of Kazakhstan for fifteen years in respect of each renewable energy source type, support of which is stipulated by documents of the State Planning System of the Republic of Kazakhstan;

— The support in the sale of electrical and/or heat energy produced by RES facilities;

— The support in the connection of renewable energy source objects to electrical or heat networks of an energy transmitting organization and transfer of electrical and/or heat energy.

The auction procedures for the selection of RES projects in Kazakhstan should also be noted. Projects of construction of new RES facilities are selected through auctions. The auction price is the price of purchase of electrical energy produced by a renewable energy source facility by a settlement and financial center, determined by the auction results and not exceeding the corresponding maximum auction price. The auction operator is Kazakhstan Electrical Energy and Capacity Market Operator, JSC. [9] The rules for the organization and holding of an

auction including qualifying requirements for auction participants, the application content and filing procedure, types of financial support of an auction application and payment and refund conditions, the procedure for summing up the results and winner selection are prescribed by order of the Ministry of Energy of the Republic of Kazakhstan No. 466 of December 21, 2017. [10]

The Kyrgyz Republic

Several strategic planning documents at once are dedicated to the issues of the growth of the use of renewable energy sources in Kirghizia. The National Development Strategy of the Kyrgyz Republic for 2018 to 2040 approved by Order of the President of the Kyrgyz Republic No. УП 221 of October 31, 2018, sets the task of expansion of the use of RES to achieve larger energy independence: implementation of planned projects will allow raising the capacity of the Kyrgyz energy system by at least 10% as soon as within five years or by 385 MW. To assist this process, the state will create a regime of maximum preferential treatment of the import of technological equipment, electrical energy sale guarantees in terms of volumes and price. [11] RES issues are also covered in the "Green" Economy Development Program of the Kyrgyz Republic for 2019 to 2023 [12] approved by resolution of the Government of the Kyrgyz Republic No. 605 of November 14, 2019, and in the Fuel and Energy Complex Development Strategy of the Kyrgyz Republic for the Period until 2025. [13] A draft of the Fuel and Energy Complex Development Concept of the Kyrgyz Republic for the Period until 2030, where the RES provisions are much more extensive as compared to the previous strategy until 2025, has also been prepared. It is specified that the country has substantial RES potential and the main RES types are small river and watercourse energy, solar energy, wind energy, geothermal water energy and biomass energy. [14] The same project notes that the adoption of the Law of the Kyrgyz Republic On RES in 2008 has brought no significant changes except for commissioning of several micro hydro-electric power stations, biogas and solar installations within demo projects, and the mentioned RES use potential is low in general irrespective of the available RES stock.

According to the data of the State Committee for Industry, Energy and Subsoil Use of the Kyrgyz Republic, the laws on RES were improved in 2019 by amendment of some legal acts of the Kyrgyz Republic in the sphere of renewable energy sources that stipulate changes in the economic and organizational legal mechanisms of encouragement of the use of renewable energy sources by introduction of such amendments as, for example: exemption from taxation of manufacturers of electrical and heat energy, gas and renewable fuel in a gaseous state, liquid biological fuel obtained as a result of RES use within five years from profit receipt; electrical energy generated with the use of RES is supplied and paid for in a priority order under an electrical energy supply agreement concluded for the exemption period; distributing enterprises are compensated for additional costs of acquisition of electrical energy generated with the use of RES, that is taken into account in the calculation and setting of the nationwide electrical energy tariff for end consumers. [15]

The Kyrgyz Republic adopted Law No. 283 of December 31, 2008, On Renewable Energy Sources. [16] According to Art. 2 of this Law, its regulation object is production, consumption and sale of heat, electrical energy and fuel with the use of renewable energy sources as well as production and supply of equipment and technologies in the sphere of renewable energy sources in the Kyrgyz Republic. Art. 3 of the Law gives the following definition of RES among the main concepts and terms:

— The sources of continuously renewed energy types: solar, soil energy, vacuum energy, wind energy, water energy;

— The energy sources of non-mineral and non-carbon origin, energy of decomposition (fermentation) of biomass from any organic waste and/or materials;

— The waste heat energy (cooling towers, transformer substations, other industrial installations and units generating waste heat energy as a result of their operations).

The Law determines the main principles of the state policy in the RES sphere, RES use promotion mechanisms implemented by the Government of the Kyrgyz Republic. Special attention should be paid to Art. 12 of the

Law establishing preferences for producers of electrical and heat energy generated with the use of RES and consumers of such energy including:

— Tax and customs benefits stipulated by tax and customs laws for producers of electrical and heat energy generated with the use of RES;

— All electrical energy generated with the use of RES and neither consumed by the installation owner to cover its own needs nor sold to other consumers on the contractual basis, should be purchased by the largest distributing enterprise in the administrative and territorial structure where such RES installation is located irrespective of what electrical energy company networks such RES installation is connected to.

Besides, electrical energy generated with the use of RES is supplied and paid for in a priority order under an electrical energy supply agreement concluded for the exemption period, and there are in place coefficients to the maximum electrical energy tariff for the end user by each RES installation type.

At the same time, there are problems with application of some provisions of the Law on RES in the industry. In particular, National Energy Holding points out that there exists practice when the tariffs on purchase of electrical energy generated by RES facilities exceed multiple times the tariffs of distributing companies and compensation for such costs becomes personal burden of distributing companies. Chaotic construction of RES facilities with no reference to the needs and financial opportunities of energy companies has resulted in the imposition of the burden to purchase electrical energy under multiplying coefficients on such energy companies. At the same time, the provision on compensation for additional costs incurred by distributing companies to acquire electrical energy generated with the use of RES, that should be taken into account in the calculation and setting of the nationwide electrical energy tariff for end consumers, is not currently working. [17]

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