

GREEN FINANCING OF GREEN ENERGY AS A GREEN ECONOMY SECTOR: A BRIEF OVERVIEW OF THE STATUS OF SCIENTIFIC AND LEGAL SUPPORT

DOI 10.18572/2312-4350-2022-2-71-79



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The current status of scientific and legal support for the green financing of green energy as a green economy sector is summarized. The author points out that the man-caused impact of human civilization on global warming is insignificant compared to nature cycle impact, which does not mean that there is no need for a variety of measures to mitigate the harmful man-caused effects on nature. One of such ways to mitigate and minimize the impact is to improve the efficiency of green financing of the energy sector of economy. This approach requires in-depth scientific and legal research of the problem, which is particularly relevant in the context of modern turbulence in international economic relations.

Keywords: energy law, green economy, green energy, green financing

Since February 24, 2022, our country has been experiencing severe turbulence in international, primarily economic, relations.

All kinds of sanctions that sever well-established international ties and give rise to problems with foreign investments are being imposed on us. A number of foreign companies located in Russia stopped working. There are problems with international payments, freezing of our assets abroad, and so on. We were prepared for this a little bit after the 2008 financial crisis, the 2014 Crimean Spring, and the coronavirus pandemic that began in 2020. But the bacchanalia that began after the start of the special operation in Ukraine, inter alia, by trampling the rules of international law, multilateral and bilateral treaties and

agreements, is very serious and requires an adequate response, so to say, on all fronts.

Without getting into specifics, it should be said that we have to put our economy on a mobilization track. Speaking at the Federation Council on April 13, 2022, First Deputy Prime Minister A. Belousov even said that “in fact, an attempt has been made to organize a global blockade of Russia that schematically consists of four strongholds: the financial, trade, transport, and humanitarian ones.” However, he noted that this would not work with the sixth largest economy in the world, and the events of the past month and a half proved his point.

Therefore, there can be no talk of a “blockade” economy. Besides, we have been down that road before in the early 1920s, and we survived. But today we can and should

discuss a mobilization economy realizing that we will “survive” it, too.

It means that the legal regulation of the mobilization economy should also be put on this track, and the role of science in this process is great. The meeting of the Presidium of the Russian Academy of Sciences that was held at the beginning of this month and was dedicated to this issue noted that there was an urgent need for laws and, most importantly, mechanisms for their application to support national manufacturers and make it possible to produce world-class equipment.

As we know, the Government of the Russian Federation formed the Commission on Enhancing Economic Resilience to Sanctions. At the recent meeting of the Presidium of this Commission in April 2022, the Chairman of the Government of the Russian Federation M.V. Mishustin noted that they had already developed 200 proposals to transform the economy, catalyze economic processes, reduce the impact of Western sanctions, and take long-term measures.

But all proposals are different. For example, the Russian Union of Industrialists and Entrepreneurs has submitted over 40 initiatives to the Government of the Russian Federation to liberalize a number of environmental regulations for business in view of the sanctions and industrial ecology requirements to reduce financial and administrative risks associated with both current standards and those not yet in force.

And this is a direct “attack” on green economy and its important sector, green energy with its important component, green financing.

How justified, and even appropriate, are these initiatives of the business community, even in present-day mobilization economy?

After all, an urgent need for green energy, both globally and in Russia, is still there.

At present, as is widely known, there is a legitimate concern, *inter alia*, in public and social sciences, both internationally and in most national states, including Russia, about global climate and biota changes with consequent environmental, political, social and, other problems.

At the same time, it is obvious that a) the climate change (warming) is mainly driven by natural processes: periodic increases in solar activity, greenhouse gases, primarily methane, emissions, volcanic activity, etc., on which the current level of human civilization development can have no impact; b) this (dominant) effect greatly exceeds the negative impact on climate warming on Earth which the joint activities of human civilization have today; c) paleoclimatic studies show that the climate “warmings” similar to the one we experience now took place a very long time ago, *inter alia*, from the 8th to the 11th century BC and from the 1st century BC to the 2nd century AD. Respectively there were global climate cooling events, also periodic. In general, there were four major glacial cycles over the last half a million years and during all of the cold glaciations the Earth’s atmosphere had low concentrations of CO₂ and methane.

Does this mean that we should not take meaningful steps to prevent the coming, albeit in a limited temporal segment, climate warming with all its negative consequences both regionally and globally? Not at all. First of all, because the warming will continue, probably intensively, for decades to come, and the economy, including its major sector, the energy sector, is very sensitive to this process. Speaking at the meeting of the Presidential Council on Science and Education on February 8, 2022, the agenda of which included the main innovative projects, the President of the Russian Federation V.V. Putin said: “We have set specific goals here: accumulated net greenhouse gas emissions in Russia should be less than in the European Union over the next three decades, and Russia should become carbon neutral by 2060, this is our common decision, this is the groundwork of the Government... The entire national economy should be adapted to climate challenges”. He, however, pointed out: “In order to take into account possible risks and plan our actions correctly we should not only rely on someone else’s calculations, but determine the carbon balance in the atmosphere objectively and precisely...” Calling for a scientific system

of high-precision emissions monitoring, V.V. Putin mentioned: “We see what is being done in other countries of the world, how they arrange work in all these areas. And we should certainly not let them impose on us unacceptable approaches to these extremely important issues.” And to avoid this, Russia should be the leader in these areas. We will reduce the negative impact of the national industry, transport, and other branches on the climate of the planet based on accurate and verified data. However, according to him, it is too early to give up oil and gas. “We will extensively use all of this for twenty, thirty, or maybe fifty years. Especially our gas capacity... But it is still important to understand where all mankind and the entire planet are heading — and stay ahead.” [1]

And for these twenty, thirty, fifty years mankind, including the Russian State, will have to strive to lessen, ideally, reduce to zero, its negative impact on the climate and nature. Inter alia, by legal means. All these measures in economy, in the energy sector, and in legal regulation have “turned green”.

As we know, the Paris Agreement is the basic international green-economy act (which is, to some extent, the basis of international legal regulation of green economy and, accordingly, the green energy). Russia signed and ratified it in 2015 and on September 21, 2019, the Government of the Russian Federation adopted a special resolution on this international act. [2]

To date, Resolution of the Government of the Russian Federation No. 1587 dd. September 21, 2021 *On Approval of the Criteria for Sustainable (inter alia, Green) Development Projects in the Russian Federation and the Requirements for the System to Verify Sustainable (inter alia, Green) Development Projects in the Russian Federation* [3] is one of the main regulatory act governing relations in the area under consideration in this article. In order to encourage investment activities and attract extra-budgetary funds to projects aimed at implementing the national development goals of the Russian Federation in green financing and sustainable development, the Government

of the Russian Federation approved the criteria for sustainable (inter alia, green) development projects in the Russian Federation and the requirements for the system to verify sustainable (inter alia, green) development projects in the Russian Federation with this resolution. The above criteria were developed to implement the goals and main areas of sustainable (inter alia, green) development of the Russian Federation approved by Order of the Government of the Russian Federation No. 1912-p dd. July 14, 2021, and determine whether our country’s sustainable (inter alia, green) development projects comply with the main areas of sustainable (inter alia, green) development. They include criteria for green projects (taxonomy of green projects) and criteria for adaptation projects (taxonomy of adaptation projects). The definition of green and adaptation projects is determined by the goals and main areas of sustainable (inter alia, green) development of Russia approved by Order of the Government of the Russian Federation No. 1912-p dd. July 14, 2021 mentioned above.

The above resolution of the Government of the Russian Federation is voluminous and covers a lot of economy sectors. The energy sector includes: creation and modernization of generating facilities and supporting infrastructure for generating energy from renewable energy sources and low-carbon fuels (solar energy, wind energy, geothermal energy, biofuel and biomass, modernization (reconstruction) of hydroelectric power plants, in particular, unmanned hydroelectric power plants (flow and diversion ones), barrage hydroelectric power plants, pumped storage units, hydrogen fuel, nuclear power); creation and modernization of infrastructure, production of equipment to produce, store, and transport low-carbon fuel (biofuel and biomass, hydrogen fuel, fuel for nuclear power); implementation of projects aimed at improving the energy and environmental efficiency of power generation facilities: construction and modernization of urban and municipal heating systems based on low-carbon energy sources: RES-based heat supply; modernization

or replacement of existing generation facilities that significantly improve energy efficiency and/or reduce harmful emissions; natural gas-fired power generation (including liquefied natural gas); natural gas-fired heat generation (including liquefied natural gas); combined generation using renewable energy sources in isolated and hard-to-reach areas; construction and modernization of cogeneration facilities; creation and modernization of power and heat transmission infrastructure, production and installation of gas purification equipment at power generation facilities; capture, utilization, or storage of greenhouse gases; creation and modernization of waste management infrastructure for the energy sector (including bottom ash waste management for industrial and construction applications), nuclear waste storage and/or disposal; production of power generation equipment or plants based on renewable energy sources and low-carbon fuels: +solar energy, wind energy, geothermal energy, biofuel and biomass, hydroelectric power (including maritime), hydrogen fuel, nuclear power); construction of storage facilities for RES-based electric power, etc.

In some ways, this Resolution of the Government of the Russian Federation created a regulatory framework for the system of concessional financing of green projects in the energy sector (and other economy sectors and, even more broadly, in the sphere of sustainable development of our country). It should be noted that this Resolution determines the possibilities for unified criteria for both green and adaptation projects making it possible to formulate economic incentives and switch to advanced environmental standards. But, which is worth mentioning, this Resolution sets forth specific benchmarks which, when achieved, allow for concessional financing through special bonds or loans for a green or adaptation project. To qualify for such financing, green projects shall comply with international acts on climate and sustainable development, while adaptation projects are not subject to such requirements.

And, being guided by this Resolution of the Government of the Russian Federation in

particular, the Moscow Exchange registered the program of exchange-traded bonds of Atomic Energy Power Corporation, JSC, on May 31, 2021. The total par value of all issues to be allotted under the program amounts to RUB 100 million. These funds will be used to finance green programs and projects of Rosatom. [4] On February 3, 2022, ACRA Rating Agency informed that a green loan was verified as per the taxonomy of such loans adopted in Russia. [5] This green loan is meant for RT-Invest's subsidiary, AGC-1, LLC, to build waste incineration plants in the Moscow region. However, as A. Shapovalov notes in the article mentioned above, the main problem is that in order for a project to be recognized as green, its result should be "material" (the project implementation effect must have a long-term and significant positive impact on the climate and the environment and be quantifiable), and the project itself must also meet a number of criteria. Moreover, the "positive effect" is only identified in comparison with the zero option, i.e., when landfills that continue to burn emitting methane and discharging filtrate are the only alternative. And an option where a landfill is operated in compliance with laws and best practice (methane is used, filtrate is disposed, and useful fractions are sorted out) is not considered.

This at least means that both the criteria listed above and the official recognition of the "material" nature of the effect require considerable legal clarification. Otherwise, one may wonder whether green loans granted in such cases are legitimate.

Another important regulation for the problem considered in this article is Resolution of the Government of the Russian Federation No. 541 dd. April 30, 2019, *On Approval of the Rules of Granting Subsidies from the Federal Budget to Russian Organizations to Pay Coupon Yield on Bonds Issued for Best Available Technology Investment Projects* (with annexes to the Rules): 1) the regulation on the interdepartmental commission for the evaluation and selection of best available technology investment projects implemented at facilities that have a significant negative

impact on the environment and belong to areas of best available technology application; 2) the design abstract of best available technology investment project implemented at facilities that have a significant negative impact on the environment and belong to areas of best available technology application; 3) the calculation of subsidy amount (in rubles) granted from the federal budget to compensate for expenses incurred from payments of coupon yield on bonds allotted for best available technology investment projects implemented at facilities that have a significant negative impact on the environment and belong to areas of best available technology application [6] (as amended by Resolutions of the Government of the Russian Federation No. 2073 dd. December 10, 2020, and No. 1175 dd. July 13, 2021).

These Rules set forth the objectives, conditions, and procedure for granting subsidies from the federal budget to Russian organizations for partial compensation for expenses incurred to pay coupon yield on bonds issued in 2019-2024 for best available technology investment projects implemented at facilities that have a significant negative impact on the environment and belong to areas of best available technology application as per the criteria of classifying facilities that have a significant negative impact on the environment as facilities of category I, II, III, and IV of corresponding investment projects, bonds and/or for partial compensation for expenses incurred to pay interest on loans granted in 2019-2024 by Russian lending institutions and international financial organizations established under international treaties, to which Russia is a party, to implement investment projects. In this case, subsidies are granted to achieve the goals and objectives of the Ecology National Project. Subsidies are granted to Russian organizations that implement investment projects involving funds obtained from the placement of bonds or loans to partially compensate for actual and documented expenses incurred to pay coupon yield on bonds and/or pay interest on loans, including investment projects implemented by their subsidiaries.

Federal Law No. 296-Φ3 dd. June 21, 2021, *On Limitation of Greenhouse Gas Emissions* also matters, although in a particular, but basic, segment. [7] It was developed in pursuance of the instruction of the President of the Russian Federation to the Government of the Russian Federation to reduce greenhouse gas emissions to 70% as compared to the 1990 level by 2030 and form a strategy of development of the Russian Federation with low greenhouse gas emissions until 2050.

Referring to the opinion of A. Novak, Deputy Prime Minister of the Russian Federation, the media reported: “Our low-carbon fuel and energy balance is our obvious, but not yet used, advantage. For example, the share of environmentally friendly NPPs and HPPs is up to 40 percent in Russian power generation. Considering that exported goods consume only 20 percent of all generated power, we can at least provide proof of purity of exported products” [8]. And referring to the opinion of experts, the same source says: “Business is afraid of carbon regulation, because it sees an additional tax burden in it. However, there are many ways to make such regulation fiscally neutral. There is considerable potential for introducing carbon pricing in energy taxation. For example, partially replacing the MET with energy consumption tax with its differentiation by energy source based on their carbon footprint encourages energy saving and using cleaner energy sources, but this does not result in heavier fiscal burden for business in general or in higher energy prices.”

And in general, according to the World Bank, the world already has 64 “carbon price” initiatives (either as quota systems and carbon unit circulation or as carbon taxes) covering about 22% of global GHG emissions and generating about USD 53 billion in revenue. [9]

Since the Federal Law, as stated in Part 2 of Article 1, is aimed at “creating conditions for sustainable and balanced development of the economy of the Russian Federation while reducing greenhouse gas emissions”, it is hardly possible to present a solution to this major objective in this area without updating

the institution of green financing, which will require deeper scientific and legal study of this segment of the problem.

Decree of the President of the Russian Federation No. 76 dd. February 8, 2021, *On Measures to Implement the State Scientific and Technological Policy in the Environmental Development of the Russian Federation and Climate Change* and, accordingly, the Federal Scientific and Technological Program in the Environmental Development of the Russian Federation and Climate Change for 2021-2030 developed in accordance with the Decree and adopted by the Government of the Russian Federation on May 18, 2021, play a certain role in this area of legal regulation.

The ways for bank regulators to implement legal regulation of the national green financing strategy are being worked out in detail. Thus, on October 14, 2019, the Bank of Russia as the major financial sector regulator published the Concept of Building a Methodological Framework in Russia to Develop Green Financial Instruments and Responsible Financing Projects drafted by the Expert Council on the Long-Term Investment Market. [10] And in the following, 2020, year, the Bank of Russia adopted and published two major documents directly related to ESG banking: on April 20, 2020: the revised Regulation on Standards of Securities Issue no. 706-II dd. December 19, 2019, which provided for the possibility of issuing green and social bonds, and a year later the Recommendations for the Implementation of Responsible Investment Principles dd. July 15, 2020.

VEB.RF State Corporation (former name: Vnesheconombank Development Bank) has its own segment of regulation of transition of the Russian economy to green technologies, in particular, the national green finance standard in Russia. According to Order of the Government of the Russian Federation No. 3024-p dd. November 18, 2020, VEB.RF State Development Corporation is assigned the function of a methodological center for developing investment activities in sustainable, inter alia, green, development and attracting extra-budgetary funds to development projects

in the Russian Federation, in particular, to develop a national green finance system that should facilitate green projects on better terms. Thus, on July 13, 2020, VEB.RF published the Methodological Recommendations on Green Financing [11] and a description of eligible projects. Clause 1.1 of the national standard determines the concept of “taxonomy” for the Russian Federation as the major areas of implementation of green projects in the Russian Federation. In addition, VEB.RF published the List of Rating Agencies it approved as independent verifiers. Currently, there are only two agencies: Expert RA and ACRA.

National green bonds are also issued. For example, in May 2019 RZD, JSC, placed green Eurobonds on the Irish Exchange amounting to EUR 500 million with a coupon rate of 2.2% and maturity of 8 years. And the Moscow Exchange launched the Sustainable Development Sector for the Financing of Environmental and Social Sustainability Projects in July 2019. The Sustainable Development Sector on the Moscow Exchange consists of three different segments: 1) Green Bonds; 2) Social Bonds; and 3) National Projects. As of February 26, 2021, there were 11 registered issues of Green Bonds and 3 issues of Social Bonds in the Sustainable Development Sector.

As for the scientific and legal support of green financing of the economy and its key sector, energy, we can mention the work of E.P. Ermakova *More on the Issue of Green Financing in Russia* [12], in which the author, having studied the specific features of emergence of green financing in Russia, showed that Russia has examples of responsible financing and financing of green projects, but the key instrument of green financing is still green bonds only, their first pilot issue took place in December 2018, and in August 2019 the Moscow Exchange launched the Sustainable Development Section, which is directly related to the regulatory control of this area of social relations, and that the 2020 National Standard of Green Finance in Russia is a breakthrough in the regulatory control of green finance, [13] which first of all analyzes VEB.

RF's Methodological Recommendations on Green Financing published on July 13, 2020, and called the National Standard of Green Finance in Russia by many Russian experts. This document was meant to define the criteria of green projects and financial instruments for enterprises and banks and eventually describe the architecture of the national system of such financing.

E.P. Ermakova studied the problem of legal regulation of green financing both at the international level [14] and in some foreign European countries, such as Germany, France, Great Britain, and Switzerland. [15]

She also compared the legal framework of green financing in Russia, the European Union, and China in dynamics. [16]

In general, the scientific and legal support of green financing of energy as a sector of green economy is based (cannot but be based) on the scientific and economic framework of green financing of economy. There are noteworthy works by K.G. Musailov, [17] B.N. Porfirev, [18] V.V. Arkhipova, [19] A.I. Nikittseva, [20] S.I. Mishulina, [21] S.M. Nikonorov, [22] S.N. Bobylev, [23] Yu.V. Evdokimova, [24] A.A. Tatuev, [25] etc. in this sphere.

There is also a published work that covers the problem broadly [26] and presents an assessment of the current state of green financing of economy in Russia and proposals to facilitate its further development.

According to the scientific literature, green investments have doubled in Russia over 10 years, from 2006 to 2016, from RUB 65 billion to RUB 140 billion. [27]

It is also noted that a lot of multilateral development banks have green banks to guarantee the implementation of projects that at least cause no environmental damage. [28]

K.A. Selivanova points out the development of green banking in the form of issue of green bonds being debt instruments aimed at raising funds for environmental protection and climate change projects and green offices of development banks. [29]

The facts discussed (and not discussed here) suggest that a truly effective scientific and legal support of green financing of green energy

is still in its infancy and, as a consequence, the legal regulation of this green financing is far from being sufficient. Besides, it is focused on the current state of green energy problems. And without legal regulation in green financing being focused on the future, especially a distant one, it will not be possible to build its currently effective mechanism. Otherwise, even in the near future, it will be turbulent and its effect will be minor.

And what about a more or less distant future of green energy, in particular, electric energy and nuclear power, the effectiveness of which will depend on the future of green financing, which will, of course, require a fundamental scientific study of the energy technology development?

In short, this includes ultra-high voltage transmission lines (which will make it possible to transmit electric power to remote areas of our country and thus contribute to their economic development); widespread use of lithium metal (and similar) batteries with energy storage density incomparably greater than that of currently widespread lithium-ion batteries (which will dramatically increase power supply of the entire rolling stock: ships, aircraft, [30] vehicles...) with hybrid charging within seconds; implementation of six promising (to date) concepts of processing plants in the nuclear power area: a gas-cooled fast reactor, a lead-cooled fast reactor, a molten salt reactor, a supercritical water reactor, a liquid sodium-cooled fast reactor and an ultra-high-temperature reactor; more generally: the creation of nature-like artificial systems that generate molecular hydrogen as a unique source of energy from components that make up water through solar energy, etc. [31]

The author believes that some alternative types of energy originally attributed to green energy have no serious prospects. In any case, they now have major flaws. For example, wind power has a negative impact on the environment, on nature and human health, due to noise emission, not to mention the environmental damage caused by both production and disposal.

There are doubts about prospects (in the long and medium terms) of the introduction and use of the so-called carbon tax that will cover the consumption of steel, petrochemical products, and electric power in the EU (it is still disputable in our country) in proportion to the mass of carbon dioxide generated and emitted into the atmosphere during production of the same. Of course, efforts to prevent global warming are a mechanism to facilitate the transition to a new technological structure. But the introduction and application of carbon tax cannot but affect the cost of production and the effect it will cause is not obvious. It seems more effective to allocate a part of enterprises' green funds that would be meant for the said tax for environmental measures.

Anyway, it is obvious that the role of law in supporting green financing of green energy

as a sector of green economy is significant. The energy sector of our economy needs multi-segment improvement of legal regulation, which Professor V.V. Romanova convincingly shows both in her scientific [32] and even educational [33] publications. It means that there is an urgent need to improve and increase the effectiveness of relevant green legal regulation through major scientific and legal studies, which are successfully undertaken by the V.A. Musin Research Center for the Development of Energy Law and Modern Legal Science. It should be borne in mind that today we need a new scientific and legal algorithm to solve the problem of green energy transition to sustainable economic development with environmental and climatic human rights considered as its central goal. ■

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