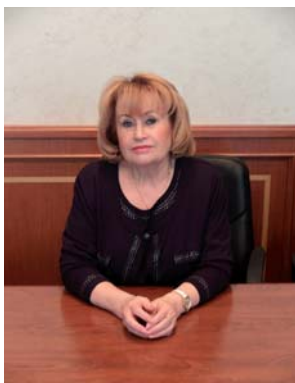


LEGAL REGULATION OF ENERGY SAVING AND ENERGY EFFICIENCY IN RUSSIA AND IN CERTAIN FOREIGN COUNTRIES

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Addressing of the problems related to the development of legal tools aimed at ensuring of energy resources preservation and improvement of their energy efficiency is becoming particularly relevant for economy of any country in the contemporary period. Presently, an integral system of regulatory legal acts is being formed in the Russian Federation to perform the state regulation of the energy supply and energy efficiency activity. The issues of legal regulation of energy supply and energy efficiency have been receiving an increased attention in the foreign legal systems for a long time. Thus, for the purposes of reasonable and thrifty use of energy resources, many European countries have developed dedicated national programs of the fuel and energy resources thrifty use including a whole package of measures aimed at a more efficient use and consumption of energy carriers, a more efficient use of recycled materials, and performing of monitoring and metering operations in the energy resources consumption. The article mentioned gives a general outline of the Russian and foreign laws defining the legal basis for the energy saving and energy efficiency activity, the application of legal measures to encourage it, and state monitoring of compliance with the laws in the said sphere.

Keywords: energy law, energy law principles, legal regulation of the activity on energy saving and enhancement of energy efficiency.

The legal regulation of energy security and legal regulation of energy efficiency constitute the main principles of energy law. V.V. Romanova correctly notes that energy security is the key category of energy law since its legal regulation testifies to the observance of the main principles of energy law: the legal regulation of the balance of interests of the parties of social (private-law and public-law) relations in the sphere of energy and, first of all, of the balance

of interests of the energy resources suppliers and consumers, the legal regulation of the protection of the rights and interests of the parties of social relations in the sphere of energy, etc. [1]

The legal regulation in the sphere of energy saving and enhancement of energy efficiency are the crucial tasks of energy law order. [2]

For the purposes of revealing particular features of regulation of the group of the energy relations concerned, one has to identify, first of all,

the notions of “energy saving” and “energy efficiency” in the laws and scientific literature.

Within the Russian legal system, the notions concerned have been documented in Federal Law dd. November 23, 2009, No. 261-Φ3 On Energy Saving and Enhancement of Energy Efficiency and on Amending Certain Legislative Acts of the Russian Federation (hereinafter referred to as the Law on Energy Saving). The said Law understands energy saving as implementation of the organizational, legal, technical, technological, economic, and other measures aimed at reducing of the amount of the energy resources used while preserving the corresponding useful effect of their use (including the amount of the products made, work performed, and services provided). The notion “energy efficiency” includes the characteristics reflecting the ratio of the useful effect of the energy resources use to the energy resources produced in order to obtain such effect as applied to products, a technological process, a legal entity, and an individual entrepreneur.

The notion “energy efficiency” has been documented in foreign laws as well. For example, the US law treats energy efficiency as the ratio of the useful effect of the use of consumer properties of a certain product to the energy spent on the use of such product. The standard amounts of the energy resources used by a product are established in accordance with special testing techniques. [3].

The legal doctrine describes various approaches to understanding of these categories: based on the similarity of the given notions and their interrelation (and, consequently, on the necessity to unify the two); and, on the other part, based on their differentiation [4, 5]. Abandonment of one of the notions, “energy saving”, as an activity of no special value was suggested, while energy efficiency enhancement was understood as an activity to ensure the most thrifty use of the energy resources at the disposal of the entities in the sphere of energy, that is why preserving of only one term, “energy efficiency”, in laws was suggested. At the same time, the debates on this issue resulted in the conclusions that both of the notions considered have their own mission, which was reflected in the current Federal Law on Energy Saving [6]. It seems that, applying the notions “energy efficiency” and “energy saving”, one implies

performing of the activity of the energy resources use able to bring a useful effect, including the decrease in (reduction of) the energy used and its saving in calculation of the amount necessary and actually spent on performing of an activity in the sphere of energy. At the same time, the Russian energy legislation lacks the notion “useful effect”. GOST 31607-2012 (International Standard. Energy conservation. Norm-method securing. Basic concept. Brought into effect by Order of the Federal Agency for Technical Regulation and Metrology dd. November 23, 2012) contains the notion “useful energy” understood as the energy and its amount necessary for services provision, work performance, or completion of a given operation under ideal conditions.

The necessity to include the notion “useful effect” in this standard is connected with its documenting in an international document, Energy Terminology Multi Language Glossary, to indicate the thrifty resources consumption and the concurrent use of renewable energy sources in the activity of business entities.

Presently, an integral system of regulatory legal acts is being formed in the Russian Federation to perform the state regulation of the activity of energy supply and energy efficiency. Apart from the basic legislative act, the Law on Energy Saving, Decree of the President of the Russian Federation dd. June 4, 2008, No. 889 On Certain Measures to Enhance the Energy and Environmental Efficiency of Russian Economy and the Regulation of the Government of the Russian Federation dd. December 18, 2014, On the Preparation and Distribution of the Annual State Report on the Condition of Energy Saving and Enhancement of Energy Efficiency in the Russian Federation are crucial for determining the measures aimed at performing of the tasks in this field.

One should note that the current laws (for example, Article 8 of the Law on Energy Saving) prescribe that the constituent entities of the Federation and municipalities should take measures on the implementation of programs encouraging energy supply and improvement of energy efficiency performance.

Decree of the Government of the Russian Federation dd. December 31, 2009, 31225

(as amended on July 22, 2013) contains the requirements for the regional and municipal programs in the field of energy supply and enhancement of energy efficiency.

Thus, Decree of the Moscow Government dd. September 27, 2011, 3 451-ПП (as amended on March 28, 2017) approved the program of the city of Moscow on development of the utility and civil engineering infrastructure and energy saving which includes corresponding energy saving and enhancement of energy efficiency measures. A similar State Program has been approved in the Republic of Tatarstan for 2014–2020 [7].

The paramount powers in forming of the regulatory and legal basis for performing the activity in energy saving and energy efficiency and monitoring of exercising of the same have been vested in the Ministry of Energy of Russia, under which the Russian Energy Agency has been established, the Ministry of Economic Development of Russia, and the Ministry of Industry and Trade of Russia.

Subordinate legal acts establishing the particularities of an energy survey (energy audit) conduct hold a special place in the sphere of energy, for example, Order of the Ministry of Industry and Trade of Russia dd. July 4, 2006 No. 141 On the Approval of the Recommendations on the Conduct of Energy Surveys (Energy Audits), and Order of the Ministry of Labor of Russia dd. March 13, 2017 No. 276Н On the Approval of Professional Standard Specialist on Energy Survey of Capital Construction Facilities.

Due to special importance of energy and energy resources use for Russian economy, the law has designated particular authorities monitoring and supervising the compliance by business entities in their activity in the sphere of energy with the requirements for energy saving and enhancement of energy efficiency. Performing of general functions of monitoring the activity of the entities in the sphere of energy has been vested in the Ministry of Energy of Russia, including the obligations to monitor the conduct of energy surveys with their results used by the ministry to analyze and process the energy passports generated by the state and municipal organizations. A range of competent federal state authorities have been charged with performing of the

corresponding functions, among those authorities one can highlight the Federal Environmental, Industrial, and Nuclear Supervision Service (Rostekhnadzor), the Federal Antimonopoly Service, and the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor). The procedure for conducting by these authorities of the monitoring and supervision activities has been defined by the Rules of State Monitoring of Compliance with the Laws on Energy Saving and Enhancement of Energy Efficiency as Approved by Regulation of the Government of the Russian Federation dd. April 25, 2011, No. 318. The procedure for the supervision activities conduct is documented by administrative rules adopted based on the orders of the said authorities. Thus, for example, order of Rospotrebnadzor dd. July 16, 2012, No. 762 approved the Rules in accordance with which Rospotrebnadzor monitors the inclusion of all necessary information on the energy efficiency category in the goods sold by business entities. According to the Administrative Rules approved by order of Rostekhnadzor dd. December 12, 2011, No. 697 (as amended on November 11, 2015), Rostekhnadzor performs the functions of state monitoring and supervising the compliance by the owners of non-residential buildings, structures, and edifices, in the course of operation of the same, with the requirements for energy efficiency stipulated for such buildings, structures, and edifices, and for their equipping with metering devices for the energy resources being used.

The main regulatory legal act defining the procedure for conducting the monitoring and supervision activities as related to performing of the energy saving activity is Federal Law dd. December 26, 2008, No. 294-ФЗ On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Course of Performing of State Monitoring (Supervision) and Municipal Monitoring which introduces a three-level monitoring and supervision system, with the federal, regional, and municipal levels.

Presently, the Russian Energy Agency, based on the analysis of the materials of the surveys conducted, has presented the list of the grounds that can give rise to conducting of the corresponding

inspections of legal entities and individual entrepreneurs [8].

Establishment of a dedicated state informational system enabling the accumulation and the retrieval of all information necessary for performing of the activity in the sphere concerned, and the use of the same for the purposes of an efficient implementation of the corresponding programs of energy saving and enhancement of energy efficiency (Decree of the Government of the Russian Federation dd. June 1, 2010, No. 391 On the Procedure of Establishment of the State Informational System in the Sphere of Energy Saving and Enhancement of Energy Efficiency and Creation of the Environment for Its Operation) is a positive factor facilitating the use by a business entity of the current regulatory legal acts on energy saving and enhancement of energy efficiency.

The issues of legal regulation of energy saving and energy efficiency have been receiving an increased attention in the foreign legal systems for a long time. Thus, for the purposes of reasonable and thrifty use of energy resources, many European countries have developed dedicated national programs of the fuel and energy resources thrifty use including a whole complex of measures aimed at a more efficient use and consumption of energy carriers, a more efficient use of recycled materials, and performing of monitoring and metering operations in the energy resources consumption [9].

The United States of America is one of the world's major energy consumers. The US national energy policy has been built to influence the use of energy in the following sectors: industrial, commercial transportation, and housing. The regulatory legal acts on ensuring of energy efficiency are developed and implemented in the country at the following levels: a) by the federal authorities, covering the entire territory of the United States; b) at the states level; c) by local government authorities. At the states level, the law stipulates implementation of special programs according to which dedicated energy efficiency funds are established with their money spent on the introduction of energy efficient technology and taking of energy saving measures. The following acts are of strategic importance for forming of the legal basis

in the sphere of energy efficiency and energy saving in the USA: the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007. The Energy Policy Act stipulates tax deductions to stimulate production and enhancement of energy efficiency, as well as encouragement tools operating through regulatory standards, including the introduction of incentives for voluntary use of energy efficiency technology by business entities. The Energy Independence and Security Act is generally aimed at establishment of the energy efficiency provisions regarding the environment, including enhancement of energy efficiency of electric lighting, electric appliances, buildings, and transport [10].

The Office of Energy Efficiency and Renewable Energy under the U.S. Department of Energy was established in the USA to be in charge of the actual implementation of the measures on enhancement of energy efficiency.

Presently, the issues of energy saving and energy efficiency have become especially important not only for the national legal systems with their solution being the prerequisite for a successful operation of the contemporary world economy in general. Achieving of the set objective of creation of a better legal basis in the sphere of the relations under study requires taking into account those international regulations and, accordingly, international obligations agreed to and undertaken by Russia under various agreements. The importance and priority of international cooperation in the said field are increasing.

Thus, for the European Union's countries, ensuring of energy efficiency and energy saving are the priority and strategic line of activity facilitating the reduction of energy consumption, and waste from the use of energy resources [11]. The Treaty on the Functioning of the European Union refers the sphere of energy to the joint competence of the EU and its member states. The general objectives of the EU's policy in the said sphere include ensuring of the energy market operation and the reliability of energy supplies to the EU, promotion of energy efficiency and energy saving and development of renewable forms of energy, development of the connections between the energy networks, etc. The achievement of the said objectives must facilitate forming of a single

internal energy market and the preservation of the environment based on the principles of solidarity in the relations between the EU members. One should agree with the statement that, in the given case, the clause on the “solidarity principle” has no definite regulatory meaning and, consequently, is construed differently by the member states and, due to that, represents a political declaration rather than a rule of law [12].

Directive 2012/27/EC of the European Parliament and of the EU Council of October 25, 2012, is the main regulatory document defining the basis for regulation of the relations in energy saving and enhancement of energy efficiency within the EU; according to that Directive, solutions to many issues of the crisis phenomena in the economy may be found, to a certain extent, through addressing the energy issues (those of energy saving and enhancement of energy efficiency). Shifting to an energy efficient economy encourages an accelerated dissemination of innovative technology solutions and the growth of competitiveness of the energy markets’ entities, and, eventually, the growth of the national and the world economy. One should note that the world policy on energy saving and energy efficiency is formed taking into account the environmental factors (related, *inter alia*, to the greenhouse effect), which is determined by the provisions of the Kyoto Protocol and, presently, the Paris Agreement of 2015 as well, documenting the requirements for the reduction of the carbon dioxide gas content in the atmosphere starting from 2020.

The provisions on the coordination of the energy policy being implemented by the states and on taking into account the international agreements and conventions signed in this sphere are contained in the Energy Charter, which states the necessity for the states to develop general conditions for sharing the environmentally sound cutting-edge technology in order to enhance energy efficiency and attract investment in projects on its enhancement.

In June 2014, the EU Council approved the new European Union energy security strategy with its provisions expected to encourage an improved coordination between the national energy regulators, as well as, based on that, the

development of a unified external energy policy within the EU [13].

These requirements cover Russia as well, which, as a party to such agreements, is also tasked with the implementation of dedicated programs to enhance energy efficiency of business entities and reduce the impact on the environment.

The EU Directives pay special attention to the issues of the implementation of energy efficient technology and encouraging the use of energy obtained from the renewable sources, which will allow decreasing of the existing dependence on the oil and gas imported from third countries and improving of the energy supply reliability within the EU.

The national system of energy laws is formed under the influence of the projects being implemented with the involvement of Russia within the framework of international organizations: the Shanghai Cooperation Organization (SCO) established in 1996; the Eurasian Economy Union established in 2015 (EAEU); BRICS, the intergovernmental association of Brazil, Russia, India, China, and the South African Republic (established in 2006).

The main provisions, determining the landmarks in addressing the energy issues related to the activity aimed at energy saving and enhancement of energy efficiency, have been documented in the BRICS’s instruments. The Memorandum of Mutual Understanding in Energy Saving and Energy Efficiency was signed at the level of the ministers of energy of the Association’s member states (2015). This document provides for joint action on cooperation development in the sphere of enhancement of the national economies energy efficiency, including forming of the list of energy efficient technologies. Permanent task groups have been established to solve these tasks and include the deputy ministers of energy of the BRICS countries. The BRICS economic partnership strategy is aimed at performing of the activity on ensuring energy security, the implementation of environmentally safe technology of energy resources production, storage, and consumption, encouraging of the renewable energy sources use, the creation of the new energy-efficient technology base, the establishment of a

joint institute for forecasting and coordination of the energy-efficient sectors' development in the BRICS members.

Cooperation in the sphere of energy within the framework of international agreements and establishment of international and intergovernmental

organizations can result in formation and implementation of a program on development and improvement of both the national and world economies, and improve the legal basis of the relations in the sphere of the fuel and energy complex of economy. ■

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