

# ON PRIORITY AREAS OF LEGAL RESEARCH ON ENERGY LAW TAKING INTO ACCOUNT THE MODERN LOW-CARBON AGENDA

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*The article studies the modern areas of the development of the legal regulation in the energy industry. The legal regulation in the sphere of reduction of greenhouse gas emissions, carbon unit circulation has been developing for a while in some countries and is on the establishment stage in others. Nevertheless, climate agenda tasks are universal for the entire world's community, so a significant role will be paid to the continuation of the international legal unification for the purposes of exclusion of non-acknowledgment of ratios concerning climate projects, carbon units, inter alia in the course of performance of foreign economic activities including international trade in carbon units. In this respect, special relevance is attributed to comparative legal studies of provisions of different states establishing legal regimes in respect of climate projects, carbon units, regulating the procedure for the interaction between parties to the respective public relations, enshrining requirements for climate project participants, regulators and controllers.*

**Keywords:** energy law, legal regulation development tendencies in the fuel and energy complex, legal support of carbon unit circulation, climate projects.

## Introduction

Works by Russian and foreign scientists are fairly dedicated to the tasks and areas of legal research in energy law including modern research areas [1]. I would like to note the following flagship works for the development of energy law: A.G. Lisitsyn-Svetlanov (Energy Law: Tasks of the Further Development of the Industry; Parameters of the Legal Policy in the Energy Industry) [2]; M.I. Kleandrov (Bright Future for the Energy Law Science; Fundamental Energy Law Grounds) [3],

V.V. Romanova (Energy Law Order: Current State and Tasks; Strategic Tasks of the Development of the Fuel and Energy Complex and Training of Top Qualification Energy Law Specialists) [4] and others.

All current and future fundamental energy law issues will need to be studied as such areas as the legal support of energy security, the legal regulation of energy markets, the energy law and order at the national and international levels for obvious reasons cannot be treated as one-time topics and should be paid continued

attention by representatives of the scientific, expert, professional legal community, i.e., be included in annual research plans for the long run as they cover an extremely wide range of constituent elements.

Attention should also be paid to new energy law areas that are actively formed and occupy an independent place among elements of the energy law and order designed to ensure compliance with the energy security principles at the national and international levels.

Such legal research areas also include the “climate area” concerning the legal regulation of reduction of greenhouse gas emissions, the climate project implementation procedure, carbon unit circulation.

In his speech at the plenary session of the Russian Energy Week international forum, President of the Russian Federation V.V. Putin noted that one of the key factors that determines the long-term development of the world energy industry is climate change and emphasized that Russia supports international climate initiatives, performs the undertaken obligations and in a real-case scenario will try to achieve carbon neutrality of its economy by 2060 [5]. The President of the Russian Federation also highlighted in his speech that since climate saving is the task of the entire humanity, the climate agenda should not serve as a weapon for the promotion of economic and political interests of separate countries. We should join forces to create unified for all, clear, fair, transparent climate regulation rules that will be in force at the global level. They should be based on the real caring for climate, understanding of the role and contribution of each country through mutually recognized models for the accounting and monitoring of greenhouse gas emission and absorption, and of course, the current world situation shows that climate preservation issues should be solved in close connection with the plans for the development of economy industries, primarily, the energy industry. Global energy market balancing mechanisms need to be agreed upon, while energy resource producers and consumers need to start a subject-based, well-grounded dialogue on this topic [6].

Considerable efforts of the scientific community are required to implement the singled out aspects and solve the set tasks. Comparative research and scientific activities need to be carried out.

The Russian Energy Week 2021 included active discussions of the hydrocarbon energy industry prospects, the future of the traditional energy industry taking into account energy transition tasks. In his speech during the panel discussion *The Future of the Traditional Energy Industry: Is the World Ready to Stop Using Hydrocarbons?* within the Russian Energy Week international forum, A.V. Novak, Deputy Prime Minister, noted that in his opinion, the hydrocarbon energy industry will continue to serve as the basis for the climate balance in the future. The trend of raising the RES share in the energy balance was incoherent with the creation of reserves for peak gas consumption in some periods. It all serves as evidence of the fact that the balance needs to be carefully forecasted. The main problems on the gas market are rooted in the low quality planning of energy resource procurements, which results in fluctuations. That’s why, energy security issues need to be treated prudently. A.V. Novak emphasized that the proposals for termination of investments to hydrocarbon projects have nothing to do with the real life. Generation should be based on the balanced approach towards the development of the clear and traditional energy industry. Even if the hydrocarbon share decreases, such reduction will reach just 65–70 % in the coming decade. Conditions for investments in the energy industry need to be created [7].

The outlined problems also require a lot of legal research including in the sphere of the legal regulation of investment activities in the energy industry.

Problems of the legal regulation in the energy industry noted at the Russian Energy Week 2021 and other international forums, an unfavorable situation on foreign energy markets due to the lack of traditional energy resources serve as evidence that a significant volume of work in terms of the international legal unification in the energy industry is ahead.

Today, the international legal unification of climate change provisions is insufficient despite the concluded multilateral international treaties.

The United Nations Framework Convention on Climate Change (the “Framework Convention on Climate Change”) was concluded in New York in 1992 [8]. The number of its current members exceeds 180 states. The Russian Federation is also a member of the Framework Convention on Climate Change [9].

The convention has its conceptual framework that includes brief definitions of the following concepts: unfavorable consequences of climate change; climate change; emissions; greenhouse gases; regional organization of economic integration; accumulator; absorber; source. Provisions on the goals, principles, obligations of the parties, studies, human resource training, etc. are also enshrined in the Framework Convention on Climate Change.

The final goal of the Framework Convention on Climate Change is the achievement of stabilization of greenhouse gas concentrations in the atmosphere at the level causing no dangerous anthropogenic impact on the climate system. Such level should be achieved within the terms that are sufficient for the natural adaptation of environmental systems to climate change, enable not to pose any threats to food production and ensure further stable economic development.

The following principles are worth noting among the principles that Parties to the Framework Convention on Climate Change are guided by to reach the indicated goals: the principle enshrined in Clause 4, Article 3 stipulating that the policy and measures of protection of the climate system against anthropogenic changes should correspond to the specific conditions of each Party and be integrated with the national development programs as the economic development is of key importance for the adoption of measures of reaction to climate change, and the principle enshrined in Clause 5 of Article 3 stipulating that the parties need to cooperate for the purposes of facilitation of the establishment of a favorable and open

international economic system resulting in sustainable economic growth and development of all Parties especially the Parties that are developing countries allowing the latter to react to climate change problems in a better way. The measures adopted for the purposes of climate change combating including unilateral measures should not serve as a means of unreasonable or unjustified discrimination or concealed international trade restriction.

It is also worth noting that the Framework Convention on Climate Change contains no definitions of such concepts as climate project, carbon unit, verification, climate project validation.

The mentioned definitions are not stipulated by the Paris Agreement concluded in Paris on December 12, 2015, for the purposes of promotion of the implementation of the Framework Convention on Climate Change (the “Paris Climate Agreement”) [10] and aimed at strengthening the global reaction to the climate change threat against the backdrop of sustainable development and poverty eradication efforts. The Paris Agreement contains provisions on contributions of the Parties to the global reaction to climate change determined at the national level.

It should be taken into account that both of the mentioned conventions enshrine general provisions on the actions of the Parties in climate change issues and stipulate the development of the respective regulation at national levels, which is carried out.

The absence of unified approaches towards the key provisions and criteria can trigger differences in interpretations and acknowledgments of criteria adopted at national levels, which can result in the imbalance of interests of parties to international relations, inter alia in carrying out of foreign economic activities.

Minister of Economic Development of Russia M.G. Reshetnikov noted at the Ecumene 2021 international congress on sustainable development that there is a lack of understanding between countries on the mechanisms of achievement of Paris Agreement goals, paid attention to the need to agree on the acknowledgment of carbon

units and unified climate project parameters in different countries. Attention was also paid to the inadmissibility of imposition of supranational mechanisms of collection of additional payments through carbon regulation as such mechanisms violate the trade and WTO rules. Considering the above, a conclusion was made that the Paris Climate Agreement requires efficient implementation mechanisms [11].

By estimates of the World Bank, about 21 percent of world greenhouse gas emissions were covered by special regulatory measures as of April 1, 2021. The main regulation forms are systems of allocation of quotas on greenhouse gas emissions and systems of carbon taxes and duties, some countries have adopted mixed forms of regulation at the national and regional levels [12].

The European carbon border adjustment mechanism (CBAM) has become the subject of multiple discussions and attracted the attention of experts, CBAM stipulates a duty on import of goods to the EU if the production of such goods involves large-scale CO<sub>2</sub> emission [13]. The President of the Russian Union of Industrialists and Entrepreneurs A.N. Shokhin has noted that the carbon tax “doubles the elements of the European emissions trading scheme and imposes regulatory practices of the European Union on other countries”. According to the head of the Russian Union of Industrialists and Entrepreneurs, the most important decisions are referred to the level of by-laws, so the world community is offered to support the bill development with no understanding of the real effect for CO<sub>2</sub> emission reduction or the socioeconomic development of the world [14].

At the same time, the Treaty on the Eurasian Economic Union includes no provisions on reduction of greenhouse gas emissions, climate projects, carbon unit circulation although this Treaty stipulates the establishment and functioning of common energy resource markets. In this respect, this legal regulation area also deserves to become a subject of legal research for the purposes of the development of unified approaches primarily for the member states.

Active development of rule making in the sphere of the “climate agenda” in the Russian

Federation can be noted within the framework of the national regulation.

The core special regulatory act of the Russian Federation in the reviewed sphere is Federal Law No. 296-FZ of July 2, 2021 On Restriction of Greenhouse Gas Emissions (the “law on greenhouse gases”) [15] that enters into force on December 30, 2021. The goal of the Law on Greenhouse Gases is creation of conditions for the stable and balanced development of the economy of the Russian Federation in terms of reduction of the level of greenhouse gas emissions.

The Law on Greenhouse Gases forms a new area of the national legal regulation of climate change.

The covered legal regulation sphere occupies an independent place in further establishment of the energy law and order. New legal regulation objects are introduced, requirements for legal regimes of regulation objects and legal positions of parties to regulated relations are established, requirements for contractual regulation, state regulation, control are enshrined.

The Law on Greenhouse Gases stipulates definitions of such concepts as climate project, contractor under a climate project, verification of climate project implementation results, carbon unit, party to carbon unit circulation, operator of a carbon unit register.

The Law on Greenhouse Gases enshrines provisions on the authorities of the Government of the Russian Federation, federal executive authorities, target reduction of greenhouse gas emissions, rights and obligations of legal entities and individual entrepreneurs; requirements for the state record keeping of greenhouse gas emissions, climate projects, carbon unit register, circulation thereof, information support in the sphere of restriction of greenhouse gas emissions.

It should be mentioned that a considerable number of provisions refer to the level of by-laws that in the majority of cases need to be adopted by the Government of the Russian Federation and authorized federal executive agencies.

Within the framework of the development of provisions of the Federal Law On Restriction



of Greenhouse Gas Emissions, the Ministry of Economic Development of the Russian Federation has prepared and is discussing by-law drafts including the following ones:

the Draft of the Resolution of the Government of the Russian Federation On the Approval of Rules for the Verification of Climate Project Implementation Results; the Draft of the Resolution of the Government of the Russian Federation On the Approval of Rules for the Submission and Verification of Reports on Greenhouse Gas Emissions, the Form of Reports on Greenhouse Gas Emissions, Rules for the Development and Maintenance of a Register of Greenhouse Gas Emissions and Amendments to the Rules for the Development of a State Information System in Energy Saving and Raising of Energy Efficiency and Conditions for the Functioning Thereof; the Draft of the Order of the Ministry of Economic Development of Russia On the Approval of Criteria of and Procedure for Referring of Projects Implemented by Legal Entities, Individual Entrepreneurs or Individuals to Climate Projects, the Form of and Procedure for Submission of a Climate Project Implementation Report; the Draft of the Resolution of the Government of the Russian Federation On the Approval of the Procedure for the Development and Maintenance of a Carbon Unit Register and Performance of Operations with Carbon Units in Such a Register; the Draft of the Resolution of the Government of the Russian Federation On the Operator of the Carbon Unit Register; the Draft of the Resolution of the Government of the Russian Federation On the Approval of the Form of a Model Agreement for the Provision of Services Involving Performance of Operations in the Carbon Unit Register by the Operator [16].

Following the results of the legal analysis of the published drafts, one can conclude that irrespective of the considerable volume of work performed, many issues stipulated by the drafts need to be significantly updated. Draft update proposals and recommendations have been duly submitted to the Autonomous Non-Commercial Organization V.A. Musin Research Center for the Development of Energy Law and Modern Legal Science within the framework of expert activities.

Thus, the need to carry out legal research including comparative legal research involving provisions of foreign legal regulation taking into account the obvious lack of available unified provisions at the international legal level is acquiring special importance nowadays.

This work should be carried out systemically, with the involvement of Russian and foreign scientists and experts as tasks of the legal regulation of climate change should correspond to the goals and principles that are common for the international community.

It should also be mentioned that the legal regulation area reviewed in this article is not the only one that deserves attention and scientific development. We cannot ignore tasks involving the establishment of the legal framework for functioning of the hydrogen energy industry, legal support of digitalization in various branches of the energy industry and many others. This is evidence that there is a need to carry out a lot of legal research for the development of the legal regulation at domestic and international levels. New challenges and tasks cause reinvigoration of modern energy law research centers, training of specialized scientific personnel and the respective advanced training of legal personnel in the fuel and energy complex. ■

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