



Правовой энергетический форум 2013-2024

ISSN 2079-8784

URL - <http://ras.jes.su>

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Выпуск № 1 Том . 2023

Legal Arrangements for Natural Gas Export under Sanctions

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Аннотация

In 2022, the Russian fuel and energy complex was subjected to unprecedented pressure from foreign states committing unfriendly actions through the application of various sanctions. The export of natural gas as a key source of oil and gas revenues of the budget of the Russian Federation is one of the main targets of economic sanctions. In order to reduce the negative impact of the application of economic sanctions, the development and application of prompt response measures, effective arrangements of legal regulation to counteract economic sanctions against Russian natural gas export, becomes urgent. This article analyzes the types of sanctions applied by states committing unfriendly actions to the export of natural gas, as well as the response legal regulation mechanisms adopted in order to counteract sanctions. Based on the results of the analysis, the author formulated recommendations for the development of legal regulation of natural gas export under sanctions.

Ключевые слова: energy law, legal regulation of gas export, counteractions to economic sanctions

Дата публикации: 31.03.2023

Ссылка для цитирования:

Кошман С. С. Legal Arrangements for Natural Gas Export under Sanctions // Правовой энергетический форум – 2023. – Выпуск № 1 С. 61-66 [Электронный ресурс]. URL: <https://mlcjournal.ru/S231243500025251-4-1> (дата обращения: 19.05.2024). DOI: 10.18254/S231243500025222-2

1 In 2022, the Russian fuel and energy complex was subjected to unprecedented pressure from foreign states committing unfriendly actions through the application of various sanctions.

2 V.V. Romanova rightly draws attention to the fact that new challenges from unfriendly states, economic sanctions against Russian energy companies, as well as companies in related industries, cause the strengthening of energy law order protection mechanisms in order to ensure the energy security of the Russian Federation. [1]

3 Foreign sanctions affect various spheres of activity of the Russian fuel and energy complex, including pricing issues, [2] corporate governance, [3] and procurement activities. [4]

4 In order to protect public and private interests from sanctions, the Russian Federation began to develop a system of legal regulation to counter sanctions.

5 The relevance of the development and application of prompt response measures, effective arrangements of legal regulation to counter economic sanctions against Russian natural gas export, should be noted separately.

6 In order to develop and apply effective arrangements for countering sanctions, it is advisable to establish which of them were directed against the export of Russian natural gas, and what consequences their application leads to.

7 Among the key sanctions affecting the export of natural gas, it is necessary to highlight the following:

8 - **Restriction on access to foreign technologies.** [5] This restriction leads to the withdrawal of foreign companies from the Russian market, restricting access to intellectual property items;

9 - **Inclusion of Russian individuals and legal entities involved in the export of natural gas in the sanctions lists,** [6] which leads to the restrictions on the rights of such persons in the form of seizure of property, prohibition of transactions, etc.;

10 - **Establishment of a price cap for natural gas,** [7] which is expressed in the creation of artificial restrictions on natural gas prices that are not related to free market pricing arrangements;

11 - **Prohibition of the supply of certain categories of goods to the Russian Federation,** [8] which is expressed in the inability to supply (lease) foreign equipment, devices, apparatuses, spare parts used in the export of natural gas from unfriendly states;

12 - **Seizure of property,** which, among other things, leads to the restriction of the right to dispose of funds of Russian energy companies on accounts with foreign banks;

13 - **Deprivation of control over the management of energy companies abroad,** [9] which consists in the appointment of provisional administration (managers) by

foreign state authorities in Russian energy companies registered abroad, which leads to the deprivation of the ability of the founders of such companies to influence corporate governance, commercial decision-making;

¹⁴ - **Expropriation.** Expropriation of property, including real estate owned by Russian energy companies abroad (energy facilities, land plots, buildings, etc.).

¹⁵ All of the above examples of sanctions have a significant negative impact on natural gas export. The negative consequences of their application affect various stages of the natural gas export chain such as: extraction, transportation, storage, and sale. The content of sanctions lies in their direct focus both on the target (a particular energy company) and on the creation of external conditions leading to the refusal of interested parties to enter into relations with the addressee of sanctions.

¹⁶ The listed examples of sanctions in relation to natural gas export require the adoption of prompt and effective response measures, the main purpose of which is to reduce the negative effect of the adoption and application of sanctions against the Russian Federation and Russian energy companies.

¹⁷ As V.V. Shabunya reasonably notes, the analysis of the laws of the Russian Federation on countering unilateral sanctions proves the formation and development of the system of anti-sanctions laws of the Russian Federation in the last decade. [10]

¹⁸ Due to the unprecedented increase in pressure on the Russian fuel and energy complex, in 2022, this system of anti-sanctions regulation has gained notable development.

¹⁹ V.V. Romanova rightly notes that the special economic measures adopted in the Russian Federation (despite their temporary nature according to the current laws) in their content and scope actually form new conceptual framework for the functioning of energy markets both at the national and international levels. [11]

²⁰ This statement is particularly justified in relation to those special economic measures that have been taken in relation to the export of natural gas.

²¹ Due to the public-law nature of sanctions as an act of a state (association of states), the purpose of which is to create negative consequences, primarily of economic nature, for another state and/or legal entities (individuals), countering sanctions is possible by creating an appropriate system of legal regulation aimed at establishing and applying response measures to such unfriendly actions.

²² The basis for creating a system of legal regulation for countering sanctions in the Russian Federation is the Constitution of the Russian Federation in terms of provisions on the protection of human and civil rights and freedoms (Article 2 of the Constitution of the Russian Federation), the possibility of limiting human and civil rights and freedoms by federal law to the extent required to protect the fundamental principles of the constitutional system, ensuring the defense of the country and the security of the State (Part 3 of Article 55 of the Constitution of the Russian Federation).

²³ The laws of the Russian Federation on Security, on Special Economic Measures and Coercive Measures, on Measures (Countermeasures) against Unfriendly Actions

of the United States of America and Other Foreign Countries constitute the legal basis for establishing measures of legal regulation of relations aimed at countering sanctions.

²⁴ Specific prompt measures aimed at countering sanctions are established at the level of subordinate regulations (Executive Orders of the President of the Russian Federation, as well as Resolutions and Decrees of the Government of the Russian Federation).

²⁵ The Executive Orders of the President of the Russian Federation occupy a special place in the system of legal regulation aimed at countering sanctions.

²⁶ In accordance with the Constitution of the Russian Federation, the President of the Russian Federation has a special legal status. The President of the Russian Federation is the guarantor of the Constitution of the Russian Federation, human and civil rights and freedoms, and also determines the main areas of the national and foreign policy of the state. This legal status provides the President of the Russian Federation with broad powers and opportunities to take the measures required to counteract sanctions.

²⁷ It should be noted that the procedure for the adoption of the Executive Order of the President of the Russian Federation is simpler and faster than the procedure for the adoption of a federal law.

²⁸ Among the key Executive Orders of the President of the Russian Federation affecting the export of natural gas, it is necessary to highlight Executive Order of the President of the Russian Federation No. 172 dated March 31, 2022, on the Special Procedure for Performance by Foreign Buyers of Their Commitments to Russian Natural Gas Suppliers (Executive Order No.172), which formulates special rules for the fulfillment of payment obligations by foreign buyers of Russian natural gas using special K-type accounts.

²⁹ By providing for a mandatory procedure for transferring foreign currency payments to a special account with an authorized Russian bank in order to fulfill the buyer's obligations under the contract, Executive Order No. 172 significantly reduced the risk of blocking transactions that are aimed at payment for Russian natural gas supplies, by foreign banks. The need for compliance with the requirements of Executive Order No. 172 by a foreign buyer is ensured by the obligation of the Russian supplier to discontinue the supply of natural gas in case of non-receipt of payment within the time limits set in the foreign trade contract.

³⁰ At the end of 2022, Executive Order No. 172 was supplemented with provisions allowing Russian natural gas exporters to accept payment of debts of foreign buyers for natural gas supplies in a foreign currency (Executive Order of the President of the Russian Federation No. 992 dated December 30, 2022). Besides, according to clause 8(3) of Executive Order No. 172, repayment of a debt in a foreign currency is not a basis for resuming natural gas supplies.

³¹ Such a measure has become a reasonable way to protect the interests of Russian natural gas exporters in relation to those buyers who used the provisions of Executive Order No. 172 to evade their payment obligations in relation to the delivered volumes of natural gas. [12]

³² A significant challenge for facilitating the export of natural gas was the reduction of cross-border gas transportation capacities due to the explosions that occurred on the Nord Stream gas pipelines, the refusal of a number of European Union countries to purchase Russian natural gas.

³³ One of the key measures aimed at countering the above unfriendly actions of foreign states was the proposal of the President of the Russian Federation to create the largest gas hub for Europe in Turkey. [13]

³⁴ A gas hub can be defined as a trading platform used to conduct physical and/or financial transactions with natural gas. The gas hub offers a wide range of services and is specifically designed to support trading activities in relation to a significant number of participants. [14]

³⁵ In addition to solving the problem of redirecting the lost volumes of natural gas transit through the Nord Stream gas pipelines by creating additional routes for exporting natural gas to Europe along the bottom of the Black Sea, the Turkish gas hub can become a new point of transfer of ownership of natural gas from Russian to foreign buyers.

³⁶ At the same time, due to the fact that, along with Russian natural gas suppliers, several foreign natural gas suppliers are also expected to participate in the physical supply of natural gas to the Turkish gas hub, due to the mixing of natural gas, it will be impossible to determine which volumes of natural gas are Russian and which are of foreign origin.

³⁷ Due to the absence of foreign suppliers of natural gas on the “northern” routes, the creation of a Turkish gas hub is the most promising option to reduce the negative effect of European sanctions against Russian natural gas due to its mixing, before entering the European Network of Transmission System Operators for Gas (ENTSO), with natural gas of foreign origin. In addition, the Turkish gas hub could become an alternative pricing point for Russian natural gas, which would reduce the negative effect of the European Union’s attempts to artificially determine the pricing of natural gas.

³⁸ The Turkish gas hub could be established by signing an international intergovernmental agreement. Such an agreement could establish the rules of operation of the gas hub, the procedure for performing trade operations at the gas hub, the legal status of the subjects of the gas hub, etc.

³⁹ At the same time, the specific terms and conditions for the functioning of the Turkish gas hub will depend on the agreements between the Russian and Turkish participants in the process of creating a gas hub, as well as between foreign natural gas suppliers.

⁴⁰ In conclusion, I would like to support the proposals of V.V. Romanova on the need to develop a national unified enactment governing public relations in energy security. [15] The relevant enactment could contain general rules on the cases and procedure for developing measures aimed at countering sanctions against the Russian fuel and energy complex in general, and natural gas export in particular.

41 Besides, the measures that are currently being taken at the level of subordinate laws could be further consolidated in such an enactment. This unification would help avoid the occurrence of conflicts in the application of a significant number of laws and regulations aimed at countering the sanctions that are currently being adopted.

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Abstract

In 2022, the Russian fuel and energy complex was subjected to unprecedented pressure from foreign states committing unfriendly actions through the application of various sanctions. The export of natural gas as a key source of oil and gas revenues of the budget of the Russian Federation is one of the main targets of economic sanctions. In order to reduce the negative impact of the application of economic sanctions, the development and application of prompt response measures, effective arrangements of legal regulation to counteract economic sanctions against Russian natural gas export, becomes urgent. This article analyzes the types of sanctions applied by states committing unfriendly actions to the export of natural gas, as well as the response legal regulation mechanisms adopted in order to counteract sanctions. Based on the results of the analysis, the author formulated recommendations for the development of legal regulation of natural gas export under sanctions.

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Publication date: 31.03.2023

Citation link:

Koshman S. Legal Arrangements for Natural Gas Export under Sanctions // Energy law forum – 2023. – Issue 1 C. 61-66 [Electronic resource]. URL: <https://mlcjournal.ru/S231243500025251-4-1> (circulation date: 19.05.2024). DOI: 10.18254/S231243500025222-2