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## Natural Gas Exports Legal Regulation under the Foreign Legislation

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### Аннотация

The study of legal regulation of natural gas export relations in foreign countries and the factors influencing the formation of a particular system of legal regulation of such relations, identification of common approaches and differences in different legal systems constitute an urgent task of energy law. In order to study the different approaches to the regulation of natural gas export, this article examines the legal regulation systems that have been developed in the leading countries exporting this energy resource, such as Norway and the USA, as well as in the countries where the technological and legal framework for natural gas export is being formed, with Argentina as an example. The results of the study show that natural gas export in all the countries considered is subject to the appropriate permit issued by an authorized state body.

The formation of the system of legal regulation of natural gas export is influenced by many economic and legal factors, the most important of which are: level of demand for natural gas in domestic market of an exporting country; existence of international treaties with importers that provide grounds for exemption from customs duties and unhindered export of natural gas; availability of sufficient explored natural gas reserves and technologies of natural gas extraction in an exporting country. The features of natural gas export regulation in foreign legal systems reviewed in this article can be considered when improving natural gas export regulation in the Russian Federation.

**Ключевые слова:** energy law, gas law, legal regulation of gas export

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<sup>1</sup> The study of legal regulation of natural gas export relations in foreign countries and the factors influencing the formation of a particular system of legal regulation of such relations, identification of common approaches and differences in different legal systems constitute an urgent task of energy law.

<sup>2</sup> V.V. Romanova rightly notes that the legal regulation of the use of energy resources, features of the legal regime of energy resources, requirements for energy saving and energy efficiency should be in accordance with the goals of scientific and technological development, energy security and strengthening of the energy legal

order at the national and international levels. It is necessary to improve the legal regulation in this area, taking into account the results of legal analysis of foreign legislation and practice of its application [1].

<sup>3</sup> Certain aspects of legal regulation of public relations in exporting natural gas are studied by foreign scientists. [2]

<sup>4</sup> R.J. Heffron is right when he draws attention to the fact that energy law in all countries of the world should have similar rules, because it is based on the same universally used technologies. The differences are to be found in the energy resources that the countries possess and also in the intended energy structure of a given country. [3]

<sup>5</sup> The leading countries currently exporting natural gas through pipelines are the Russian Federation, Norway, the USA, Algeria, Canada, Argentina, and Turkmenistan.

<sup>6</sup> This article examines the regulatory systems that have emerged in the leading exporters of this energy resource, such as Norway and the USA, and in countries that are developing the technological and legal framework for natural gas export, using Argentina as an example, in order to examine the different approaches to regulating natural gas export.

<sup>7</sup> *(a) Legal regulation of natural gas export from Argentina*

<sup>8</sup> Natural gas production in Argentina has increased steadily over the past five years, primarily due to increased production from the Vaca Muerta shale deposit.

<sup>9</sup> The Vaca Muerta deposit has the world's largest shale gas reserves — 8.7 trillion cubic meters of gas, according to the U.S. Department of Energy. However, only 4 % of the project area has been developed to date.

<sup>10</sup> As production has increased, Argentina has resumed exporting natural gas through pipelines to neighboring Chile and Brazil. [4]

<sup>11</sup> Pursuant to Article 3 of Argentine Natural Gas Law No. 24.076, natural gas export shall be authorized by the competent executive body within ninety (90) days of receipt of the interested party's request, provided that such authorization does not adversely affect the domestic supply of natural gas. In such case, the silence of the authorized body shall constitute consent. Exporters shall provide copies of the relevant contracts to the authorized natural gas regulator. [5]

<sup>12</sup> According to Article 6 of Argentine Hydrocarbons Law No. 17.319 [6], the executive authorities may authorize the export of hydrocarbons that are not required to adequately meet the needs of the domestic market, provided that such exports are made at reasonable commercial prices, and in this situation may establish criteria that will regulate transactions in the domestic market to ensure the rational and equitable participation of all producers in the country.

<sup>13</sup> In 2020, Argentina adopted Decree No. 890/2020 (hereinafter referred to as the Decree) approving the Plan for the Facilitation of Natural Gas Production Based on Supply and Demand for 2020–2024 (hereinafter referred to as the Gas.Ar Plan) [7].

<sup>14</sup> Article 1 of the Decree declares that the facilitation of natural gas production in Argentina is a national public interest and a priority of the Argentine Republic.

<sup>15</sup> Article 4(c) of the Decree establishes the basic principles, criteria and conditions for natural gas export from Argentina under the Gas.Ar Plan. The Decree establishes that companies producing natural gas and participating in the Gas.Ar Plan may be offered preferential export conditions on a permanent basis up to a total volume of eleven million cubic meters (11,000,000 m<sup>3</sup>) per day, only during the non-winter period.

<sup>16</sup> At the same time, according to clause 6.23 of the Gas.Ar Plan, the winter season is the period from May 1 to September 30. Consequently, natural gas may be exported from Argentina from October 1 to April 30 (the summer season according to clause 6.24 of the Gas.Ar Plan).

<sup>17</sup> Legal entities producing natural gas in Argentina may join the Gas.Ar Plan. By joining the Gas.Ar Plan, such legal entities commit to produce certain amounts of natural gas for a period of four years. Clause 6.45 of the Gas.Ar Plan establishes the Total Baseline Volume of natural gas production in Argentina, which is the objective of the Gas.Ar Plan. The Total Baseline Volume is 70,000,000 m<sup>3</sup>/day for a period of four years.

<sup>18</sup> Clause 73 of the Gas.Ar Plan establishes that, if the Total Baseline Volume (of production) is covered, the legal entities participating in the Gas.Ar Plan will have a priority right to export natural gas on a firm basis.

<sup>19</sup> Thus, the regulatory regime for natural gas export from Argentina is influenced by the limited supply of natural gas in the domestic market. The Argentine government has taken measures to encourage the production of natural gas by giving priority export rights to those companies that meet Argentina's domestic natural gas needs. The export of natural gas is authorized by the competent authority after a company has demonstrated that it has fulfilled its obligations to produce certain amounts of natural gas and to sell such amounts on the domestic market.

<sup>20</sup> *(b) Legal regulation of natural gas export from the USA*

<sup>21</sup> Prior to the widespread use of hydraulic fracturing and directional drilling since about 2007, U.S. natural gas production was declining rapidly, and the industry was building LNG import terminals to ensure an adequate supply of natural gas for U.S. heating, electricity, and industry [8].

<sup>22</sup> In 2016, 96 % of the natural gas produced in the United States was consumed domestically. However, in 2017, the United States became a net exporter of natural gas for the first time in almost 60 years and is expected to maintain this status in the near future [9].

<sup>23</sup> The U.S. exports natural gas through pipelines to Mexico and Canada, totaling about 80 billion m3 per year [10].

<sup>24</sup> The key normative legal act governing U.S. natural gas exports is the Natural Gas Act of June 21, 1938 [11], as amended.

<sup>25</sup> Section 3 of the Natural Gas Act establishes a mandatory authorization order for natural gas export. Section 717b(a) of the Natural Gas Act stipulates that "no person shall export any natural gas from the United States to a foreign country without first having secured an order of the body authorizing it to do so" [12].

<sup>26</sup> The authorized body shall issue such order upon application "unless it finds that the proposed exportation is not consistent with the public interest" [13].

<sup>27</sup> Currently, the U.S. Department of Energy is the authorized body issuing natural gas export orders.

<sup>28</sup> The rules and procedures that interested parties should follow to obtain a natural gas export order from the U.S. Department of Energy under the Natural Gas Act are set forth in Part 590 (Administrative Procedures with Respect to the Import and Export of Natural Gas), Section 10 (Energy) of the CFR (Administrative Procedures) [14].

<sup>29</sup> The Division of Natural Gas Regulation of the U.S. Department of Energy reviews applications and issues natural gas export orders. The process for obtaining a natural gas export order involves the completion and submission of an application by the interested party and review of the application by the Division of Natural Gas Regulation. Currently, there are two types of natural gas export orders: long-term and short-term [15].

<sup>30</sup> To obtain a long-term order, a legal entity shall submit an application for natural gas export if it has a signed natural sales gas contract for a period of more than two years.

<sup>31</sup> The application should be submitted at least 90 days prior to the proposed date of natural gas export [16]. § 590.202 of the Administrative Procedures contains requirements for the content of the application. In particular, the application should include:

<sup>32</sup> - A general description of the transaction, including the volume of natural gas that the applicant plans to export.

<sup>33</sup> - The start and end dates of the proposed export of natural gas.

<sup>34</sup> - The infrastructure facilities that the applicant intends to use in order to export natural gas.

<sup>35</sup> - Sources and guarantees of natural gas supply security, including delivery volumes specified in the natural gas export contract, as well as a description of the natural gas reserves that will be used to secure the delivery obligations during the period of time for which the natural gas export order is requested.

<sup>36</sup> In addition, the application should identify all parties to the transaction and the material terms and conditions of the natural gas export transaction, including take-or-pay terms, obligations to withdraw make-up gas, and other terms and conditions affecting the market price of gas.

<sup>37</sup> A simplified procedure is established for short-term natural gas export orders. A short-term order is issued if the period of natural gas supply is less than two years. An application for short-term orders may be

submitted electronically. Unlike the procedure for obtaining long-term orders, the applicant is not required to attach a copy of the natural gas supply contract.

<sup>38</sup> As mentioned above, in order to obtain a natural gas export order, the applicant should demonstrate that the export of natural gas will be in the public interest.

<sup>39</sup> In this regard, it is important to mention the amendments made to Section 3 of the Natural Gas Act pursuant to Section 201 of the Energy Policy Act of 1992 [17].

<sup>40</sup> Under the above amendments, natural gas exports to a country with which the U.S. has a free trade agreement that provides for a national regime for natural gas trade are presumed to be in the public interest and applications for such exports shall be granted without modification or delay.

<sup>41</sup> This provision has greatly simplified the authorization process for natural gas exports to countries with which the U.S. has a free trade agreement (USMCA [18]), including Mexico and Canada, the only countries to which the U.S. exports natural gas through pipelines.

<sup>42</sup> Article 2.3 of the USMCA stipulates that each Party to the Agreement shall accord national treatment to the goods of the other Party to the Agreement in accordance with Article III of the GATT 1994, including the interpretative notes thereto, and to this end Article III of the GATT 1994 and the interpretative notes thereto are incorporated therein and made an integral part thereof, mutatis mutandis.

<sup>43</sup> The USMCA also establishes zero export customs duties for natural gas shipments from the United States to Mexico and Canada [19].

<sup>44</sup> To summarize the above analysis of the legal regime governing natural gas exports from the United States, the following should be noted:

<sup>45</sup> 1) The U.S. has established an authorization procedure for natural gas exports. In order to export natural gas, it is necessary to first obtain an order from the authorized governmental body, which is currently the U.S. Department of Energy.

<sup>46</sup> 2) To obtain a natural gas export order, the interested party should submit a completed application to the U.S. Department of Energy no later than 90 days prior to the date of the proposed natural gas export, including information on the material terms and conditions of the natural gas supply.

<sup>47</sup> 3) The U.S. Department of Energy shall issue a natural gas export order if it is not contrary to the public interest of the United States.

<sup>48</sup> 4) The U.S., Mexico, and Canada have the USMCA which provides for free trade among the countries participating in the Agreement.

<sup>49</sup> 5) A free trade agreement with countries that import natural gas delivered through pipelines from the United States makes it significantly easier for interested parties to obtain natural gas export orders because, under current law, natural gas exports from the United States to such countries are deemed to be in the public interest.

<sup>50</sup> *(c) Legal regulation of natural gas exports from Norway*

<sup>51</sup> Norway has significant natural gas reserves, which are produced on the Norwegian Continental Shelf (NCS). Norway's domestic consumption of natural gas is very low, and almost all natural gas produced is exported by pipeline [20] to the European gas market [21].

<sup>52</sup> Norway is one of the world's largest natural gas exporters, ranking third in the world (after Russia and Qatar). Total natural gas production in 2021 was 114.3 billion m<sup>3</sup>, of which 112.9 billion m<sup>3</sup> was exported. Norwegian natural gas supplies account for about 25 % of the natural gas market share in the European Union [22].

<sup>53</sup> The legal regulation of natural gas exports from Norway is significantly influenced by international treaties and agreements that have been concluded between Norway and the member states of the European Union.

<sup>54</sup> Norway is a member state of the European Free Trade Association (EFTA), which was established by Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the United Kingdom on the basis of the Stockholm Agreement of January 4, 1960 [23] to promote closer economic cooperation and free trade in Europe [24].

<sup>55</sup> The current EFTA members are Iceland, Liechtenstein, Norway, and Switzerland. The EFTA establishes a free trade area among the EFTA members.

<sup>56</sup> On May 2, 1992, the EFTA members (Norway, Iceland and Liechtenstein) and the member states of the European Union concluded the Agreement on the European Economic Area [25] (EEA Agreement), which entered into force on January 1, 1994. Article 1 of the EEA Agreement states that the purpose of this Association Agreement is to promote the permanent and balanced facilitation of trade and economic relations between the contracting parties under equal conditions of competition and observance of the same rules with a view to the create a homogeneous European Economic Area, hereinafter referred to as the EEA.

<sup>57</sup> In order to achieve the above objectives, the association will entail, in accordance with the EEA Agreement, the free movement of goods, services, capital and people.

<sup>58</sup> According to Articles 8–12 of the EEA Agreement, customs duties and quantitative restrictions on exports and imports of goods originating in the territory of the contracting parties are prohibited in mutual trade between the contracting parties.

<sup>59</sup> Thus, as an EEA member, Norway has open access to the European Union’s internal energy market, which also means free movement of natural gas in trade with EEA members.

<sup>60</sup> Norway has developed a unique system of legal regulation to govern the procedure for obtaining NCS natural gas production licenses. A natural gas production license actually entitles the license holder to export natural gas.

<sup>61</sup> The main legal act governing the legal regulation of natural gas production in Norway is Oil and Gas Activities Act No. 72 of November 29, 1996 [26].

<sup>62</sup> Article 1.1 of the Oil and Gas Activities Act states that the Norwegian State is the owner of subsea oil and gas fields and has the exclusive right to determine the management of oil and gas resources.

<sup>63</sup> Oil and gas resources are managed by the King of Norway in accordance with the provisions of the Oil and Gas Activities Act and decisions of the Storting (the Norwegian Parliament).

<sup>64</sup> Section 3 of the Oil and Gas Activities Act establishes that no person other than the State of Norway may carry out oil and gas activities without the licenses, permits and approvals required under the Act.

<sup>65</sup> Section 3 of the Oil and Gas Activities Act sets out the procedure for granting natural gas licenses. According to Section 3.3 of the Oil and Gas Activities Act, a natural gas production license is granted by a decision of the King of Norway with the participation of the Norwegian Government (The King in Council) for certain areas of the Norwegian Continental Shelf.

<sup>66</sup> The license may be granted to a legal entity established under Norwegian law and registered in the Norwegian Business Register.

<sup>67</sup> The license grants the exclusive right to natural gas exploration, exploratory drilling, and production within the field areas covered by the license. The licensee becomes the owner of the natural gas produced.

<sup>68</sup> Of particular interest are the provisions of Article 3.6 of the Oil and Gas Activities Act, which allow the State to participate directly in any natural gas production license. The State’s direct participation in natural gas production projects is carried out through the State’s Direct Financial Interest (SDFI). This mechanism allows the State to hold a proportionate interest in a natural gas production license like any other licensee. The SDFI is determined by the Government and negotiated as part of the license award process. As a rule, the State only participates in licenses that are of strategic interest or in areas of the NCS that are likely to be most promising.

<sup>69</sup> A special procedure is used in Norway to allocate natural gas licenses to interested parties — Awards in Predefined Areas (APA), which is conducted annually by the Norwegian Ministry of Petroleum and Energy.

<sup>70</sup> Under the APA, the Norwegian Ministry of Petroleum and Energy designates NCS areas in the North Sea, Norwegian Sea and Barents Sea and invites interested parties to apply for natural gas production licenses. After reviewing the applications, the Norwegian Ministry of Petroleum and Energy decides on the allocation of licenses in the proposed NCS areas. Information on the holders of each license is entered into a special register that is open to the public [27]. Thus, natural gas production in Norway is based on licenses that have been awarded through a public selection process.

<sup>71</sup> The results of the study show that natural gas is exported in all countries on the basis of appropriate permits issued by the competent state authority.

<sup>72</sup> The formation of the system of legal regulation of natural gas exports is influenced by many economic and legal factors, the most important of which are as follows:

<sup>73</sup> 1) The level of security of natural gas demand in the exporter's domestic market.

<sup>74</sup> 2) Whether or not the natural gas exporter has international treaties with importers that provide grounds for exemption from customs duties and unhindered export of natural gas.

<sup>75</sup> 3) Whether or not the exporter has sufficient explored reserves of natural gas and technologies for its production.

<sup>76</sup> The features of the legal regulation of natural gas exports in foreign legal systems reviewed in this article can be taken into account when improving the legal regulation of natural gas exports from the Russian Federation.

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# Natural Gas Exports Legal Regulation under the Foreign Legislation

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## Abstract

The study of legal regulation of natural gas export relations in foreign countries and the factors influencing the formation of a particular system of legal regulation of such relations, identification of common approaches and differences in different legal systems constitute an urgent task of energy law. In order to study the different approaches to the regulation of natural gas export, this article examines the legal regulation systems that have been developed in the leading countries exporting this energy resource, such as Norway and the USA, as well as in the countries where the technological and legal framework for natural gas export is being formed, with Argentina as an example. The results of the study show that natural gas export in all the countries considered is subject to the appropriate permit issued by an authorized state body.

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