



Contemporary developments in regulation and international legal framework in energy

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A BRIEF HISTORICAL OVERVIEW

- Since mid-90es Energy Charter Treaty (ECT) was the only widely accepted international treaty on energy
- It gathered about 50 countries as its Contracting Parties (CP)
- Most of them were from the EU (an extension of the EU steadily increased this number) and from CIS countries
- Main energy suppliers to the EU (incl. Norway) and energy giants outside Eurasia (as USA, Australia, Canada, OPEC members...) were not ECT CPs
- The causes for this are of specific nature but can be summarized as following:
 - ECT is an integrated document, and every Contracting Party (CP) should agree with it fully
 - It is rather vague in some aspects and is very detailed and demanding (i.e. too demanding for some of potential CPs) in others.

CONTINUATION

- A number of provisions of the ECT were not clear enough for their direct application (as national sovereignty on energy resources or requirements on tariffs)
- ECT was initially mainly focused on the securing of the investments in the CIS countries and securing delivery of its energy commodities which now are mostly out of date
- It was almost silent on the structure of energy markets (for 1994 – no TPA in Eurasia outside UK, no single EU market etc.) and became controversial for the EU on the transit
- Basic principles of the ECT were to be specified and detailed in the Protocols on specific subjects
- RF had put ratification of the ECT on the condition of signing Transit Protocol (TP). There were concerns on some ECT provisions as above

CONTINUATION

- Roots of the problems with the TP finalisation were in the transition stage of the EU market regarding transit, capacity investments and capacity allocation, auctions etc. (“Three outstanding issues”)
- Inefficiency of the ECT procedures in crisis periods (experience of start of 2006)
- Nevertheless compromise formulas on the TP incl. very innovative approaches were practically agreed and draft text was on the negotiation table in mid-June; only few wording on the Clause 20 were subject to final confirmation.
- On June 6, 2006 EU rejected from a compromise text prepared by experts of both sides
- In July 2006 G8 Summit in Sanct-Peterburg adopted Declaration on Energy Security. G8 Declaration has no tools for implementation of its principles (“no institutionalisation”)

CONTINUATION

- A Strategic Group to review ECT effectiveness in a changing world was formed in 2007 by RF proposal
- EU resisted any move to modernize ECT
- TP multilateral consultations were on the way (RF presented its vision of a process and results of EU-RF previous work on “three outstanding issues” and met support of other countries incl. transit countries)
- At Strategic Group meetings an understanding of need to adopt ECT to new challenges and the wording “ECT modernization” was moderately progressing
- There was a reliance on some political levels that negotiations on the new PCA will be a simpler format for reaching an EU-RF agreement
- Disappointments of January 2009 transit crisis, role of Charter Secretariat and inefficiency of existing mechanisms

CONTINUATION

- **April 21, 2009 - President Medvedev issues a Conceptual Approach (CA) incl. Main Provisions and Measures to prevent transit crisis. An approach to universal format reflecting contemporary challenges**
- **An alternative was expressed – to modernize ECT or to write down new document?**
- **EC Leaders emphasize that they can't exclude ECT out of new legal structure**
- **RF Government took a decision to withdraw from temporary application of the ECT (July 30, 2009)**
- **Charter experts consider that most of the CA provisions are either within ECT or can be incorporated in the Charter process**
- **In September 2009 EU approved Third Energy Package in the form that makes some steps to fill gaps of regulation which cased barriers for the TP finalisation but is somehow contradictory and puts specific and not precisely defined requirements before companies of Third Countries**
- **New PCA negotiations are not yet far developed on its energy section.**



SO:

- **How the goal to reach an universal legal format can be achieved?**
- **How the lack of legal basis in place (i,e, between EU and RF) can be filled?**
- **Bearing in mind that ECT members have not yet expressed their willingness to modernize ECT itself – not a “Charter process”**
- **New approach would be a combination of:**
 - **“Concept plus”**
 - **“ECT plus/minus”**

A WAY FORWARD

- “Concept plus”:
 - An universal agreement on principles of cooperation in the energy sphere. Could be based on CA suggestions, G8-2006 Declaration, widely acceptable provisions of the ECT
 - A legally binding document with means to enforce its implementation
 - RF is now suggesting it in the form of the “Convention”
 - CPs of “Concept plus” are full members of new “Energy Club”.

CONTINUATION

- “ECT plus/minus”:
 - A system of sectoral, area/subject matters’ oriented documents
 - Members of “Energy Club” may join any part of them (“minus”)
 - These documents in their totality cover wider area than ECT itself and its Protocols (“plus”)
 - These documents consider actual aspects as prevention of transit crisis etc.
 - A draft Convention assumes that further documents as Protocols are to be developed

CONTINUATION

- Where it can be worked out? UN ECE could be a platform
- How existing ECT members (as EU member states) would be participants of the “Energy Club”?
 - By adoption of the “Concept plus” provisions which in general should not contradict ECT principles
 - By parallel modernization of the ECT (if and when they decide so reflect new areas and improved subjects,
 - By reflection of their special understandings in the body of new documents. and
 - By forming one of “sub-clubs” of deeper integrated parties.

About National/Regional and International regulations in energy (some comments on new Study)

- **What is a list of features for contemporary energy market?**
- **What is a list of specifics for national and transnational markets?**
- **What is to be regulated internationally?**
- **What are contemporary requirements for security of investments on post-investment and pre-investment stages?**
- **What is really needed for efficient implementation of the TPA?**
- **How to reach the goal that members of the Energy Club are fully eligible in the corresponding energy markets?**



Thank you.