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SHALE GAS OUTPUT IN UKRAINE: FEATURES OF LEGAL REGULATION

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Summary

The main features of shale gas output legal regulation in Ukraine on the modern stage were analyzed and the perspective ways of making his improvements in Ukrainian national Security context were defined. Features and the ways of making legal personalities of legal bodies in shale gas production sphere in Ukraine.

Key words: shall gas, legal regulation, legal status, legal personality, gas producing companies.

Аннотация

Проанализированы особенности правового регулирования добычи сланцевого газа в Украине на современном этапе, и определены перспективные направления его усовершенствования в контексте национальной безопасности Украины. Выявлен механизм осуществления правосубъектности юридических лиц в сфере добычи сланцевого газа в Украине.

Ключевые слова: сланцевый газ, правовое регулирование, правовой статус, правосубъектность, газодобывающие компании.

Statement of the problem.

Development of market relationship in Ukraine had caused the necessity of the legal relationship regulation transformations in energy sources production, processing and realization, the main place takes oil, gas and its processing products, as the main condition of independent and effective national economics function based on commodity money production. On the modern stage of Ukrainian society development social-economics changes are happening, which caused the necessity of remaking the sense of oil-gas complex and his role in subject and object system of civil-legacy turnover. The new social-economics rising caused developing of enterprise activity legacy forms and higher competition and changing influence from the government in new conditionals. Market economics needs is causing the necessity of making the enterprise activity spreading at oil markets in competition and precise wording the line of transporting from other tradition ways of natural monopolies in the oil and gas market.

One of the most serious challenges for the Ukrainian national security on modern stage is the problem of provision with energy sources. In case of increasing the gas price from Russia for Ukraine within using the “energy halter” for realization the main Russian goals in foreign policy Ukrainian government have to take

complex decisions for liquidation the energy threats. In 2014 was adjusted reverse gas supply from EU, a lot of work was made for using alternative energy sources bur the results of this work on this moment should be better. During last few years one of the best ways to decrease the Russian gas supply is shale gas output in Ukraine. The positive moment for the enterprise activity subjects in Ukraine is the official permission on doing such works (in some other European countries it is forbidden to shale gas output). On the other hand the legacy regulation of this process continuing to improve.

The main purpose of the article.

Rating of the legacy regulation condition and saying the perspectives of shale gas output in Ukraine with the main reasons of influence in international competition sphere on the energy market on this process was defined.

Status of Research. Some aspects of this problem were in T.M. Zhyravetskoho, O.V. Kravchenko, B.G. Prots, V.V. Kharkevych, G.I. Khomechko, U.P. Bobko, I.V. Spasybo-fatieievoi, N.S. Koroviyakovskoi, O.V. Shcherbyny, L.C. Netskoi, Y.P. Patsurkivskoho, R.A. Maidanyka, M.M. Sliusarevskoho, Y.V. Kurpasa.

Relevance of the research topic is the complex legal regulation research of the shale gas outputting in Ukraine in the goals and tasks context of the Ukrainian National Secure was defined.



The goal and article task: is the analyze of the features of the shale gas outputting legal regulation in Ukraine and the perspective ways of its improvement in Ukrainian national secure context.

The presentation of the main study results: The geopolitical goals and the main tasks of the classical energy sources of leading supplies at the world energy sources market, and realization of global projects too, caused another opposition at energy market. The Crimea annexation by Russia Federation and Russian war against Ukraine in Donbas became the example of increasing reliance on geopolitical opposition. Ukraine being under considerable pressure with help of favorable conditions of getting energy sources long time was taking as a way to influence on Ukraine by Russia. But European integration process in Ukrainian society spread matching ways of thinking and was one of the reasons of Russian encroachment. In such conditions the Ukrainian energy sources output was the main way of providing Government national security. But Russian politicians and Ukrainian big financial-industrial groups are making a crucial effort on modernizing shale gas legal regulation in Ukraine.

In November 2011 The International Energy Agency said the results of regular research of world energy market by 2010 and prediction on its future development by 2035: "World Energy Outlook 2010". International Energy Agency thinks that new energy market developing paradigm by 2035 it is going to use the energy saving and energy reproduction technology by G20 and increasing the use of alternative energy sources. It is strongly belief that the recreating part of alternative sources by 2035 going to increase from 7% to 14%. The natural gas will stay as th main energy recourse but because of "shale revolution" in USA and spreading the shale gas output technology in the world by 2035 part of the untraditional gas can reach the 40% of the gas output total volume in the world[3, p.98].

15th February 2011 in Washington the Ukrainian Energy and Coal Ministry and Us Department of State signed the memorandum of common understanding between USA and Ukrainian government in case of gas recourses from untraditional sources. In 2012 International energy

companies "Shell" and "Chevron" had started researches and exploration work in Dniprovsko-Donetskogo and Oleskogo shale gas deposits. American experts of "Advanced Resources International Inc." say that the potential deposit in Ukraine is near 5,58 trillions m3 in Dniprovsko-Donetskomy is 1,36 trillion m3 and on Oleskomy – 4,22 trillions m3. But technical deposit for commercial development is 1,19 trillion m3 [2].

From 2012 the Government had made a decision for shale gas output in Ukraine. Ukrainian Verchovna Rada had passed changes to legislative acts in which said that shale gas is hydrocarbon raw material, untraditional hydrocarbon. Outputting and using the shale gas is innovative activity, the conditions of competition on distribution hydrocarbons which outputs in Olesiy and Yuzivskiy regions was defined by Ukrainian Cabinet Ministriv. In 2012 Ukrainian government had three tenders on choosing investor companies for shale gas outputting on Oleskiy, Yuzivskiy and Skifskiy territory [4].

But the agreement project between Ukraine and "Shell" company had some controversial regulations. Important thing is that the biggest problem was applying not Ukrainian legislation, but International recommended practices in exploitation oil resources, which means using and practice that in this moment is received in analogy situation in international oil sphere. Ukrainian legislative will change for these standards. In 8 addition "Environment" was said that the main exploitation installation has certified by the main international standards. Removals of process effluent and water, transporting waste have to be according to international standards. It is important to mention that only contamination of soil and surface water were evaluated, but it is no words about underground water. On the territories with small amount of water the objects have to use in such wise way to minimal line. Investor can take it for free but it is not the best way of using water. The use of waste water and injection wells was defined by this project. Investor can ask for other land that means the opportunity for him to use bigger places that was declined. In case if the land was private and land-owner was not agreed to have contract on land voluntarily, by the

request and with the consent of "Shell" it have to terminate the ownership, permanent use, lease of land. Investor can without customs duties, quotas, licensing and other confinement on bringing the products which needs mining activity on Ukrainian territory. So, such conditions of shale gas outputting formed high potential ecology threat from stale chemicals, substances without ecology standards or even wastes. In such case the interests of people that live near the outputting place did not take into account. It includes the ability to take from their owners the land by "Shall" company. Herewith the company can take for analysis only drinking water near the place where hydraulic fracturing was made, but it was no word about fish objects water or water for livestock and monitoring during drilling. Investors were planning providing the minimum observation of ecology safety standards that means in Ukrainian corrupt system of ecology control in fact is the work without control that provides the ecology catastrophe for some settlements [6].

It is known that the right and community interests realization have to be provided by government, where government are saying the public interests of the community, so must to work with a public law in the background. On the other hand defence of the people rights by government is a public work. Accept that the public activity the relationship is administrative law subject. V. Averianov, O. Andriiko, V. Poliukhovych said that the major criteria's in definition of the administrative law subject must to be the new function "remedial" (the violation rights and interests defence), which is received in other democracy countries [1]. The most effective way for defence community interests in subsoil sphere is conclude the special agreement, which will balance the interests and needs of the government, investor and community [8], but the priority task is community interest's defence. But in the agreement with "Shell" and "Chevron" it was no words about concluding such agreements with community. And also he regulations about community agreement registration was confirmed only in February 2013 by the Ukrainian Ministry Cabinet [7]. But Regulatory legislation does not provide community as the first subject in outputting question on their settle



territory. It was confirmed by №2438a bill where was said about withdraw from the Codex of Ukraine about bowels of the earth and Ukrainian bill "About local self-government in Ukraine" the community authority in process of giving the bowels of the earth in use. But in 2012 it was an agreement about distribution products between "Shell" and "Nadra Yuzivska" companies. P.26 of the agreement where was said about property relations between the companies about compensation and profitable hydrocarbon production, transfer of ownership of the extracted compensation and income carbohydrate products. The "Shell" company can export some part of shale gas output. In p.26.1 mentioned that hydrocarbons which outputted in result of oil production is in government ownership from the moment of extraction from the wellhead and up to the moment of distinction of commodity production to the delivery point. But the p.26.2 had regulations that companies may not dispose of commodity products without the written agreement of other side until the products will not divided on the delivery point. Every side can make future agreement purchase/sale of products. According to the p.26.4 sides can determinate prices in their own discretion and other conditionals, realization on Ukrainian territory, export, give for free and make other operations with products. And also on the products realization it was not licensing and quotes regime in the moment of export and the same restriction during the realization time on Ukrainian territory[6] that was really favorable for investors.

For the investors promotion, the documents, which provides the easiest way for getting the land for the purpose of oil and gas outputting, was continued. In Ukrainian Ministry of Energy sources had created the law project "About taking changes to the Land Code about easiest way of getting the land for oil and gas wells building, exploitation and maintenance and connected with their service or pipelines, production facilities, access roads, power lines, communication exploitation" that Cabmin registered at 28th January 2014. In the note to the law project was mentioned that the outputting companies have problems with getting the rights on the land for their actively. And also

bigger part of the oil and gas Dniprovsko-Donetskoy deposits, where 85% of gas and more than 75% of oil outputted in Ukraine, that are located in really important lands, so their withdraw or ransom can be made only by Verhovna Rada permission. The legacy terms for giving the land is from four month, but in practice it can be even for five years. In such conditionals it can not be created the project the twenty three years before outputting, because every new bore-hole corrects the place of the next one. The Energy and Coal Industry Ministry proposed to make a new norm in the law that allows outputting companies to make their exploring works in the ground of agreement with owner and without changes of its functions. In the project changes to Land Code mentioned that propose of making an agreement have to be considered during 15 days. And also the specialized office recommends allowing the outputting companies in case of higher amount of hydrocarbons from bore-hole to use the land as it was in the documents in legalize on use rights period, but no more than two years.

In November 2013 Ukraine signed the agreement about distribution the hydrocarbons in "Oleska" territory between Ukrainian country, "Chevron Ukraine" company and "Nadra Oleska". It is important to mention the fact that the successful coal-field research on Donbas territory and prediction correction about future gas outputting scope provide that in April 2014 Sloviansk become the object of attack from Russian saboteurs and hirelings. The fights character with help of diversion groups and Special Forces raids showed not their wish to be the chairman's on territory, but doing all things to demolish the work of gas researches and drilling rig activity. The Russia offensive against Ukraine provides that in August 2014 British Netherlands "Shell" company suspend the work on Yuzivsk territory (Donetska and Kharkivska oblast) in case of hard situation [9].

In November 2014 Ukraine declare that had made all terms to sign the agreement with "Shell" company which made researches in Oleskiy deposit. The conformation of enter upon Ukrainian duties had waited in the middle of December 2014[10]. But because of the price on oil and gas fallen the company

abolish the next researches at Oleskiy territory. At 11th December 2014 the №763 decree the National Committee, which provides the government regulation in energy and utilities sphere said that the price Formation on natural gas are making according to the Ukrainian legacy in background of the year plans of natural gas output, planned expenditure in economic background, determined by government legacy about using natural recourses, technical-economics computations and estimations, taxes reliance and obligatory payments, and also the prices in planned term, determined from price index predictions, approving in Ukrainian Ministry Cabinet on corresponding year. And it is important to mention that accounting and deciding the amount of normative losses and natural gas production and process costs during its mining, preparation for transporting and also transporting have to be doing in every deposit section and also in all for subject of ownership, that doing the nature gas outputting, according to Accounting standard costs and legal industrial-technological costs on oil, natural gas and gas condensate during its mining, preparing to transporting and transporting, approved by Ministry of Fuel and Energy of Ukraine from 18th May 2005 №224, registered in Ukrainian Justice Ministry 8 June 2005 by №636/10916 and Accounting standard costs and legal industrial-technological cost on oil, natural gas and gas condensate during its mining, preparing to transporting and also transporting, approved in Ukrainian Justice Ministry 6 January 2005 by №15/10295. And during the calculation on natural gas during his outputting, preparing to transporting, and also gas volumes that are used for own needs of ownership subject that are making the natural gas outputting, in case of money was not estimated and was not included to its cost [5].

In 2015 had become a d taxes norm problem of natural gas outputting problem. It was connected to the government initiative of making changes to Ukrainian Tax Code where was said that the maximum reliance on rent determinate on 70% line from confirmed prices on natural gas for people and industrial users sale without calculation in price the part of indirect taxes and special charges. It provides the reduce of



natural gas outputting in Ukraine. During the 2015 Ukrainian gas extraction lieder – the private “Ukrasvudobyvanyua” company suffered from excessive load rental. This factor assists that a foreign companies had mineralized their interest for gas outputting in Ukraine. Except the fighting’s on Donbas territory, one of the main reasons of such poor conditions is not wise activities in regulatory regulation of gas market. Struggle between some financial-industrial groups in Ukraine became huge problem in increasing the gas outputting with draw the foreign investors. Also reducing the Ukrainian outputting, not including some achievement in setting reverse supply of natural gas, has a threat for the National Secure of Ukraine.

Conclusion. According to Ukrainian Code about bowels of the earth, bowels of the earth are in ownership of Ukrainian nation and can be given only in use. And also in Tax Code did not form the concept as royalty on natural resources, and only the rent concept in his fiscal understanding. In practice full ask for add price for deposits owner profit happens really rarely. One part of the rent is contractor profit. So that is why it is important to add in Tax Code the rent concept on natural resources, reliance on royalty for deciding of this rent, which have to be given in budget. Also the royalty concept but not the rents as the payment for natural sources outputting is commonly-used in the world practice and had used in countries with developing economic market. The proposal agreement projects on shale gas outputting, even with enormous PR Company about low combustible prices and increasing the outputting amount for Ukraine with investors rights on deciding the price and sell market of fuel. Also the government rights humiliated, as the community rights on providing with safe ecology. This circumstances demands more attention for developing the shale gas outputting in Ukraine. High shale gas concentration on west territories in fighting’s time with Russia Federation some how provides with the outputting process. On the other hand, the potential unstable situation in case with Crimea annexation, admiration by Russian mercenaries and regular units on Ukrainian Donbas impairs the investment climate in the government, do not provide

the massive shale gas outputting, which can be one of the means of improving the level of Energy Secure of Ukraine.

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