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ON ECONOMIC PLURALISM, ENERGY SECTOR LIBERALIZATION AND EUROPEAN ENERGY CHARTER*

The article is devoted to the methods of reforming of the Russian power industry and gas sector. The author reveals the legal content of the notion «power industry liberalization». The article reflects the Western liberalization model and compliance with the Russian national interests in the gas sector.

The financial crisis makes us think over the economy recovery methods. Why do the countries with liberalized economy suffer heavier from the «market economy» and economic liberalism? While the countries where the state has retained the leverage are less influenced by the troubles beyond the ocean. Actually, the more liberalism, the heavier crisis. Yet, these states are starting to adopt «the new course». It means – more state in the economy. This is a question of ideology. But liberalism cannot manage it. It is now clear for everyone that economic liberalism should have its limitations in order to save the economy. Thus, we saw in September-November 2008 the governments of several countries took charge of some private banks and announced the nationalization of others, introduce the programs of state aid, which was forbidden just a few days ago, announce the private enterprises shares buy-up and even buy-out of the newly-built dwelling houses by the state.

The market economy, which was supposed to regulate all problems without the state assistance, is

now ready to give room to the state¹. The private sector is ready to give room, and the liberal concepts are becoming less popular. At the same time the western governments, suffering from the excessive liberalization themselves, keep demanding liberal reforms and demonopolization from Russian. To be more precise, their continuation.

Energy sector. Since 1990 the Russian energy sector remains the main object of «liberalization» experiments of collective West. The procedure was the following: they «ended up» with «oil» as early as the beginning of the 90-s, by dividing and privatizing the state oil monopoly. Demonopolization and denationalization of electric power sector is also coming to the end in the nearest months. Don't forget the state monopoly on alcohol, which was similarly divided, and its parts were privatized at the beginning of the 90-s.

* Translated from Russian.

¹ Nikolai Ryzhkov: The state should be not a night guard, but an active player. URL: <http://www.bel.ru/news/business/2008/10/20/33155.html>

The political liberalization in Russia plays the special role. Its result the introduction into the country's political fiber of the (dividing) federalism and the (state loosening) democracy, confirmed by the «cement» of human rights and liberties concept. But their state ruining influence should be discussed separately. However, we cannot but mention that since 1991 the Russians felt on themselves the effect of these liberal, centrifugal reforms. The Russian gas is probably the only thing which remained «not dismembered» in the liberal outburst.

Demonopolization and denationalization of «oil», «electric power», «gas», «vodka» – the word «monopoly» itself is defamed in the public opinion. On the contrary, privatization and dismembering are presented as a progressive and fair deed. Mass media, researchers and political scientists obligingly ground the idea. To prove the highest scale of disinformation about the Russian electric power sector success, let us turn to the specialist's opinion – «against the background of increasing crisis phenomena in the Russian electric power sector, conditioned by the consequences of its non-professional reforming, the information structures of INTER RAO UES of Russia OJSC and its representatives publish in mass media and branch editions up to 50 thousand articles a year about the success of restructuring of electric power sector in Russia and even in other CIS countries» [1].

Demonopolization, monopolies buyup by parts and into private hands, and super profits. The Russian power sector consists of the most profitable and zero-risk sectors. And the most reliable ones. For example, «The All-Soviet Energy System» was the best in the energy supply reliability (California, New-York, Paris crises).

The next thing is what happened after the exclusion of state from another monopoly – alcohol. The result is pitiful – the state ceased to fight with substitutes and alcoholic addiction, which resulted in emergence of infringing production and «vodka kings»². While the market, «for some reason», does not force to reduce prices and increase quality, as it

was predicted. Let us agree that it is necessary to have state monopoly on both production and selling of all (!) alcohol-containing goods. It is also necessary to restore state control over the quality of food and alcohol. The Russian government is supposed to introduce a set of measures for the alcohol sector regulation into the State Duma in 2008³.

Oil. Let us turn to oil. What has the oil sector demonopolization and denationalization led to? To the emergence of «oil kings» as well. By 2000 the state possessed only 4% of property in all oil sectors. The rest was owned by private entrepreneurs, foreign corporations and English-speaking management, who bought up the Russian oil sector in the troubled 1990-s. the result is pitiful – the taxes from the «Russian» oil almost ceased to go to the Russian budget in the 90-s and were almost entirely transferred to foreign countries. Only recently the state managed to restore its «oil» property up to 51%, in spite of certain expenses.

Electric energy. Let us study in more detail the results of the Russian electric energy sector dismembering. Some authors pass the mild opinion, speaking of the «results of just non-professional management» of INTER RAO UES of Russia OJSC. The argument for the sector's dismembering was private investments which were supposed to flow into electric energy sector in case of demonopolization. Its reform has not yet finished, but the process of «electricity kings» formation is still going on. «Novosti» inform about appearance of an electric energy company, then another one. One of the recent events – in the middle of November 2008. Kaliningrad.ru informed of the establishing of a private «Kaliningrad generating company»⁴. Instead of one state monopoly there are «Penzaenergo» Public Corporation, «Samaraenergo» Public Corporation, «Karachaevo-Cherkessenergo» Public Corporation, «Kirovenergo» Public Corporation, «Tumenenergo» Public Corporation,

³ URL: <http://www.bel.ru/news/society/2008/10/28/33360.html>

⁴ See, for example: Svetlana Ivanova, Elena Medvedeva. «Energy system of Kaliningrad oblast is being reformed» URL: <http://www.vedomosti.ru/newline/index.shtml?2007/12/03/516920>

² «Should state monopoly on alcohol be introduced?». URL: <http://tests.open.ru/ru/about/portfolio/pressa/coments/index.php?id4=13397>

«Altaienergo» Public Corporation, «Yakutskenergo» Joint-stock Company, «Buryatenergo» Joint-stock Company, «Tatenergo» Joint-stock Company and dozens of other private enterprises. Only in Moscow there are 14. And immediately there is «Chuguevsk» accident with cutoff of 2 mln consumers. This is the first visible result of dismembering.

Let us recollect the stages of the splitting scheme, that is, excluding the state from «generating» and «delivery» sectors. Note that they did not manage to privatize the «network system». Here is the result – disagreement and mutual distrust between «the networkers» and «the deliverers» (the money is accumulated in the delivery sector only). There is overgrowth of the staff, emergence of new controlling services with salaries and new offices. Privatization ended in expenditure growth and dramatic increase of electric energy price. Moreover, the price increase became legal and uncontrollable. Nowadays each regional «power supply» company sets its own prices. Irkutskaya oblast has 32 kopecks per kilowatt, while Belgorodskaya oblast pays 6.5 times more – 2 roubles per kilowatt. The most reliable electric energy system in the world is fractured and confused. Similarly unsuccessful was an attempt to set market mechanisms of price formation in the wholesale electric power market. As a result, the experiment with deregulation led to unstable power supply and outrageous tariffs. High technology business suffers as well.

Specialists admit that the methods of the sector reforming are not new. Many countries followed the same way. But after a series of blackouts they had to either declare a moratorium on reforms or abandon market reforms in electric power sector. Thus, in the USA just two years passed after its power sector deregulation when the tariffs rocketed up and the electric power supply reduced.

According to the specialists, «the whole world has long ago admitted that the principle of construction of energy system in the Soviet Union was the most well-grounded and advanced decision, providing reliability, minimization of expenditures for electric energy producing and transferring. But nowadays the integrated energy system is in fact being destroyed» [2]. According to the specialists assessments, by 2010 the electric energy market in

Russia will be completely liberalized, and the price for 1 kW/h will be three times higher [3].

Electric energy buy-up began in March 2003, when the package of federal statutes «On electric energy sector» came into effect. The strategic sector reform started. We should not forget that it determines the country's social and economic safety⁵. In general, the scheme is very simple:

- **sector division** into 1) naturally monopolistic types of activity (transfer, distribution of electric energy, plus dispatching) and 2) competitive (production, marketing);

- then **formation of market relations** in the «competitive» types of activity (production, marketing);

- **non-discrimination** access to the services of natural monopolies, that is, simply speaking, to the transmission lines. In three years the desired division of the sector took place. The majority of previously vertically integrated enterprises, which proved their reliability and cheapness, and the regional energy sector joint-stock companies are dismembered into separate structures by their type of activity (production / transfer / marketing). As a result instead of vertical economic links constituting the main value of every business, there is a series of whole-sale generating companies (WGC) from electric power stations which are hundreds and thousands kilometers away from each other⁶. The accident rate of energy system increased dramatically.

As it was intelligently noticed by the specialists, the reform somehow coincided in time with the realization of **market reforms system** in the world electric energy system, put forward by the USA. This fact clarifies the question about the origin of «in-

⁵ Concept strategy of INTER RAO UES of Russia OJSC for 2003–2008.

⁶ The regional networks are integrated into the inter-regional distribution companies (IRDC) functioning on vast territories. For example, IRDC-1 includes the network structures of 32 divided energy joint-stock companies. The newly formed energy marketing companies, which do not possess their own assets, are transferred to the trust management of the territorial generating companies (TGC). The local authorities have lost the levers of the population energy supply. The dividing of the regional energy joint-stock companies led to the loss of control over the inaccurate suppliers for their drawbacks in customers' supply.

Russia» reforms, as «unfortunately, after coming of new management into INTER RAO UES of Russia OJSC, there began the liquidation of the centralized energy supply system of the country and reforming of the All-Russian Energy System along the pattern of American substitute of the sector management with the help of formally market reforms» [1]. «The prospect of the further similar reforms in the country's electric energy sector, aimed at obtaining the maximal corporate profit, can become the catastrophic degradation of the present accident condition of equipment in housing and communal services» [1]. There had been no blackouts in the Russian electricity supply before the electric energy sector began to be built according to the «market» principle instead of the vertical-centralized one. The foreign investment did not begin to flow into the sector as well. The tear of power capacities was not reduced. This is a vivid example of harmfulness of the American concept of the market and *dismembering natural monopolies according to the activity types*.

This is the pitiful result of the «market» «liberal» reforms in this sector. The strange thing is that the Russian government was so eager to «give up» the electric energy «production» and «marketing» (reserving just 75% of «networks»). What leverages could make it dissociate itself from its natural and indisputable monopoly...

Let us view in more detail how exactly the scheme of dismembering of the energy supply vertical works. For example, the regional Kaliningrad energy sector is reformed by the same scheme, which was probated on INTER RAO UES of Russia OJSC. The single company is being divided according to the Californian pattern: **production / networks / marketing**. Generating and marketing are sold to private investors. The single «Yantar'energo» is divided into «Yantar'energobyt» (which will own the marketing assets) and «Kaliningrad generating company, which has already obtained a heat station in Kaliningrad, Gusevskaya heat station, a hydropower station in Svetlyi and others. There also will appear the regional dispatching affiliation «Central Dispatching Department of INTER RAO UES of Russia OJSC». «Yantar'energo» itself will become just a distribution network company. Then follows the share emission and manipulation with them. And the final objective is

price rise and super profits. The price for 1 kilowatt link-up is already \$600, and now the university is unable to begin the hostel construction – it cannot afford link-up. This is the hidden mechanism of control over social development.

However, there is some reason for optimism. There is one more energy sector – gas. It has not yet lost its vertical unity. Production/networks/marketing are still in the same hands. But some people demand dismembering and destruction of this vertical structure and its reconstruction into a horizontal one. They keep insisting on liberal and market reforms. The scheme is the same – production / networks / marketing.

Why is the West so persistent in pushing these liberal «values» to Russia? Because the liberal methods represent economic and legal instruments which allow not only to demonopolize and break the Russian economy into foreign pieces, but also to shatter the state sovereignty. And this is qualitatively different, as in this case the decision-making centre devolves from Moscow to Brussels.

Gas. The same scheme, as in electric energy sector and oil, is applied for gas sector. It is the scheme of the so called horizontal dismembering, and its dismembering and place under the foreign authority is carried out by the European Union management in European Commission. Actually, the true bosses of the European Union are its donors – Germany, France, the Netherlands, Sweden, Italy plus the non-donating but constantly intriguing Great Britain. There are several reasons for that: oil and gas prices went out of the USA and European Union control since 1973; energy dependence upon Russia is growing; super profits are gained from the Russian gas sector. Let us remind the pattern: dismembering, buy-up, share emission, share manipulation, tariffs rise → super profits. All this makes the European donors' club introduce the American scheme of penetrating into the Russian energy sector and acquisition of its sovereignty-bearing spheres; moreover, these schemes are being improved. One example of such «improvement» is the European Energy Charter of 1991 (further – EEC) and its Treaty of 1994 (further – ECT).

The European Union countries are a cartel of energy resources' net-purchasers and are interested in the qualitative change of the Russian economic-

legislative order. BEFORE the reform it was based wholly on the centralized, vertical state planning and management. AFTER – on pluralism in economy and multitude of private owners of resources. The horizontal scheme, pluralism in economy. Simply speaking – «everyone in his own way». And we know very well what this «pluralism» cost us in electric energy, oil sphere, and, of course, in politics.

With the help of the liberal scheme in the gas sphere the European capitals will solve a number of problems. First, reduce to minimum the gas price. Second, get rid of the rigid energy dependence upon Russia. Third, reduce the Russia's competitiveness as a state by Gasprom demonopolization. Fourth, gain the managerial positions in the Russian energy sector. In fact, this is a strategic sphere. Nevertheless, it is being opened by the state's deprivation of the right to protectionism. The state's status is weakened to a minor share proprietor – not more. Judging by the norms of the European Charter and ECT, it is the organizational separation of the Russian mainlines and their buy-up by the Western corporations.

This scheme is presented quite attractively and friendly. Both documents are full of pleasant terms, principles and notions. Their aim seems to be the Russia's good. You can easily imagine that one should not fear liberalism in economy and one of its sectors – gas energy sector. After all, the Western Europe countries live by the liberal pattern, and live successfully. What should Russia not ratify this «good» European Charter Treaty of 1994, which establishes the common rules of investments, trade, transit, energy efficiency and settlement of disputes? Seemingly, there is nothing bad. But ECT appears not to fit with Russian national interests. The government refused to ratify it until the relevant amendments are made⁷. The Russian government should be supported in that, as it firmly defends the Russian national interests.

⁷ The Russian position was stated by the State Duma as early as 2001. The position is clear: ratification depends on clarifying of some key issues regarding, first of all, the transition regulations. As a result, Yastrzhembskiy, Assistant to the President, recently said that Russia «is not going to ratify the document without changing the statements of Transit Protocol and the Charter itself». While at the Energy Charter Conference on November 20 the Russian delegation called upon to discuss the issue of ECT reforming.

Actually, what does liberalization of the international gas trading regime mean? For that we should turn to the legal norms which are used to «twist arms» of Russia and the Russians.

European Energy Charter Treaty (1994). To begin with, the Energy European Charter of 1991 was drawn up by the European Commission almost at the same day when the USSR was dismembered. Is it a coincidence? The Charter is drawn up not as an interstate convention, for example, on trade and cooperation, but as the political and programming document. It is not a typical commercial contract on gas purchasing, but a prospective conception of the system reconstructing of the whole Russian energy sector. It comprised not the particular, but fundamental rules of the **joint** possessing and managing of the Russian «gas». Not less than that. The Charter claims to become the truly key act, opening the access for the Western concerns, and then the politicians, to the strategically significant sovereign sectors of the Russian Federation.

At the same time these inspirations were to be hidden in order to make the Treaty look habitual and progressive and to cause no concern of the Russian government! But it failed⁸. In spite of that, the Treaty of 1994 up too now remains the only document establishing the rules of play in the world fuel energy complex (FEC). That is why, if we want to reveal the juridical content of the notion «**the energy sector liberalization**», we should address to ECT. The political document, that is the Charter of 1991, is not valid in this sense, as it is not an international treaty and is voluntary by nature.

It is obvious that when the «united international energy resources market» is mentioned, Russia is supposed to be the main addressee of this multilateral convention. Russia possesses 46.1 billion cubic meters of gas (rank first in the world)⁹. European Union is becoming the cartel of the energy resources net-recipient. Russia is the net-supplier. It should be

⁸ Russia is among the countries which signed the Treaty (ECT) in 1994. However, Russia is still abstaining from its ratification and participates in the Charter on the temporary basis. About 20 states and 10 international organizations have observer status.

⁹ For information: Iran possesses more than 23 billion cubic meters, Azerbaijan – more than 1 billion cubic meters.

recalled that since 2005 Great Britain ceased (!) delivering gas to continental Europe. Since 2006 the situation of gas provision in Europe has worsened sharply, which dramatically heightened the practical interest for ECT. That is why Russia is being pressed to ratify ECT. The Group of Eight countries got involved: «...Russia should as soon as possible ratify the Energy Charter Treaty and the results of negotiations on the transit protocol»¹⁰. «It should» – that is all. Hence it becomes clear who is interested in the change of the Russian economic model and Gasprom demonopolization. That is, to carry out the same dismembering activities with the Russian gas sector, as were carried out with electric energy sector (*deregulation, dismembering* of the vertical, transition from the centralized to the *market* basis). That is, exclusion of the state from «gas». The operations are familiar. However, there is a difference. In case of electric energy sector the powerful internal (liberal) forces acted to dismember the sector according to American pattern. In case of the European project of Gasprom dismembering, we at least do not see any powerful internal lobby. Probably that is why the Charter is perceived as the alien, western, and even antagonistic one.

All this makes us think about the Western special interest in Russia as in ECT participant. It is Russia's participation that will make the European net-recipients club more balanced. Besides, ratification imposes large-scale limitations onto the Russian protectionist policy. The limitations refer to the foreign investments regime, conditions of energy resources transit via the country territory, and the gas price-formation mechanism. It contains unacceptable clauses. As the State Duma defined as early as 2001, the issues encumbering ratification include *free transit, transit tariffs* and internal transportation and some others¹¹.

It may seem that a slight correction of these issues could solve the problem. But, having studied both

documents, one feels that the mentioned issues are only the tip of the iceberg and they can lead to much more serious problems than the banal gas deliveries from one country to others. And that the notion of «the single energy market» is not as harmless for Russia as it may seem.

Indeed, according to ECT, Russia loses the role of a sovereign oil and gas seller and becomes just an extractor of resources in that international division of labour. That is, the first link of the chain. Exploration and extraction – then the further links are owned by a western proprietor. Europe gets pipe lines, distribution and marketing. It is easy to imagine that the consequences will be catastrophic for Russia. The final result is the deprivation of sovereignty for the national natural resources. And the seemingly «innocent» juridical terms there is the urge of the European Community to launch into the Russian economy and law the **systemic changes**, not the perfunctory and fragmentary ones, as a typical international agreement would imply. Their content is in liberalization of the regime of ownership and disposal of the Russian energy resources property – up to the deprivation of the state sovereignty. Thus, the Treaty excludes from the Russian state sovereignty the system of energy resources transportation, and put two out of three sectors into the private hands, as it was done in electricity sphere. These are «networks» and «marketing». But these will be not just private, but **foreign** private hands. The difference is fundamental. It is indirectly appointed, for example, by Article 18 of ECT, which left only exploration and extraction of energy resources under the Russian authority. The transportation systems «networks» are «suddenly» excluded by the western concept-makers from the Russian national sovereignty field¹².

Such sincere urge of the western transnational corporations to «divide» Gasprom and make it private foreign property is not concealed by the politicians. The EU commissioner for antimonopoly policy Neelie Kroes frankly informs that «the Russian Gasprom Public Corporation will have to sell the energy resources transportation networks in Eastern Europe,

¹⁰ P.2.6(b). URL: http://www.rspenergy.ru/main/static.asp?art_id=1552

¹¹ Secretary General addressed the State Duma Committee on energy, transport and telecommunications. Added: 07.12.2006. URL: info@encharter.org

¹² See: Art. 18 of the Treaty to Energy Charter. Signed in Lisbon 17.12.1994.

if the European Union carries out the reforms in energy industry.» According to her, «the planned reform will not allow Gasprom to keep two functions at a time – that of the energy resources producer and supplier»¹³. It will have to sell – that's all. The West is so explicit in what concerns our gas... That is, **European Commission «permits» Russia to extract gas, but not to sell the extracted**. This is what Europe and America want to do. If this is not an attempt to intrude into the sphere of the Russian public interests, then what is it? Indeed, Europe offers Russia to sign the treaty which allows with a dash of the pen, without any war or foreign enslavement to lose «half» of its national sovereignty and turn into the West's raw materials adjunct. But these consequences can be easily predicted, one should just think one or two steps ahead. And the Russian government will have to think in this way, as the European «law-maker» becomes more and more cunning in swindling its contractors, while the contracts become more and more conceptual. Still ahead is the work over the new agreement on cooperation and partnership with EU.

We should clearly understand what objectives are actually achieved through ECT. Having gained the «pipe», the western «investor» will start to impose the conditions of getting fuel in Yamal, Yamburg, Urengoi, Mikhailovskoye, Shtokman, as well as the transit conditions and, of course, the prices. Let us not forget about the taxes which will flow not into the Russian budget. The price will be determined not in Moscow, but in Brussels. The novelty is that it will determine the price for the internal consume too, who is still protected by the government against the shock prices on gas, oil products, and electricity¹⁴. Brussels has long demanded to deprive our people from the «protection cushion» of the Russian social state and it seems to achieve agreement for the gradual transition to the world prices by 2011. The collective West wants monopoly for determining the gas prices. We cannot exclude that, having strengthened itself in the

role of the Russian gas and oil's master, it will not put forward some political conditions to Moscow. The history teaches that Europe deals shortly in such cases. The western transnational corporations with the help of their governments try to gain the keys of the sector. The western ECT is Pandora's Box with the chain of far-reaching negative consequences for the Russian economy. It is the whole package of requirements to Russia concerning the **changes in organic sphere, the most economic system of Russia**.

On prices. The demand to liberalize the price-formation would mean social explosion for Russia. If we yield to the European ultimatum, the gas prices for the Russians will rocket 15–20-fold. In the EU countries, for example, the final consumer already pays \$1000 for 1 thousand cubic metres. In Great Britain the price in winter 2006-2007 rose to \$2000. While the Russian pays just \$70. This is what the «progressive» West offers us. ECT shows that EU claims for not equivalent relations. In Russia they would like to see a colony, the colonial psychology has deeply rooted in the western person's mind. Hence the «European» arrogance, mentoring, export of their economic and political liberal model to Russia (democracy, federalism, human rights, market), including the so called «European values». Let us not be deceived: the essence of the Brussels framework agreement is the Western access to the Russian «pipe» and taking it away from Gasprom. Gasprom will go to the borehole site, and the western transnational corporations will go to the pipe. But let us not forget that it is mainly Gasprom that determines the country's social and economic safety.

The dismembering scheme is the same – **production/networks/marketing**. This is the ECT quintessence. Let us see what the relevant legal norms are.

Let us read: the Article 9 directly dictates Russia to «open its doors» into energy sector: «The Contracting Parties acknowledge the importance of *open capital markets* in *encouraging the flow of capital* to finance trade in Energy Materials and Products and for the making of and assisting with *regard to Investments* in Economic Activity in the Energy Sector in the Areas of other Contracting Parties, particularly those with economies in transition. Each Contracting Party shall accordingly endeavour

¹³ URL: <http://www.energonew.ru/news/base/2007/06/24849.htm>

¹⁴ It should be reminded that only recently we witnessed the Russian government reduce petrol prices in October 2008, reduce aviation fuel prices in the same month, and a bit earlier of the steel price for Russian consumers.

to promote conditions for access to its capital market by companies and nationals of other Contracting Parties, *for the purpose of Investment in Economic Activity* in the Energy Sector in the Areas of those other Contracting Parties...»¹⁵ (here and further italics by the author).

The ECT Article 10 guarantees to all investors «fair and equal regime». «Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations...»¹⁶. Translating into the usual language – this norm appoints Russia to step back and not interfere into business. Be so kind as to grant «national regime» to the western gas concerns.

As for the energy products transit, we will mention just two norms. Article 7(1) states that «each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and products or discrimination as to pricing on the basis of such distinctions»¹⁷. Let us decipher that: by ECT, Russia becomes not only a supplier, but also a transmitter, say, from Kazakhstan and Turkmenia to Western Europe. At the same time Russia loses its right to set its own tariffs for a foreign supplier. Besides, Russia completely loses the sovereign right to decide which country it would allow to transmit gas through its own pipe. Such «perforation» of the country, which is demanded by ECT, allows the West to freely manipulate Russia, as with the free access to Russian pipeline it will be able, by the new rules, to give up the Russian gas and buy the cheaper Kazakh, Uzbek or Turkmen one. Russia turns into a «voiceless»

territory with the shortest pipelines. But it is Brussels that will decide what and where will flow through these pipelines.

The next norm introduces national regime not only for corporations (Article 10), but also for transit energy materials and products: «Each contracting party obliges that its regulations for energy materials and products transportation and for utilization of energy provide the not less beneficial regime for transit energy materials and products transportation than «Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area...»¹⁸. Let us note that «national regime» is the most unsafe and hazardous for the state, as it allows foreign companies to carry out the same activities as domestic one. Let us stress another thing. Russia is not yet a WTO member, but the Treaty demands the same openness for the foreign business. These are GATT/WTO rules. But the Russian market openness is not compensated by the similar openness of the western ones. «You should lift your barrier, while we shall pull ours down» – this is how this norm is translated.

That is why this and some other items contain the «delay-action mine» for the Russian gas energy sector, planted by the Brussels «engineers». Plus there is a special Transit Protocol, reproducing the mentioned norm of ECT Article 7(1). Probably, in 1990, when it was written, the West was not sure that the USSR with its state monopoly on foreign trade would ever agree to the undisguised foreign interference. That is why it was adopted only in 1994, when Russia «was pinned to the mat» in the economic sense and followed Europe by course of concession.

The Russian President adequately reacted to all European intrigues and «sirens' songs» about the Charter and ECT: «the European partners' access to the Russian energy sphere and absolute liberalization of this sphere are possible only in case of similar steps from the part of Europe». The Head of the state said

¹⁵ Article 9. Access to capital // Treaty to Energy Charter of 1994.

¹⁶ Article 10(1). Stimulation, protection and regime of capital investment // Treaty to Energy Charter of 1994.

¹⁷ Article 7(1). Transit // Treaty to Energy Charter of 1994.

¹⁸ Article 7(3). Transit // Treaty to Energy Charter of 1994.

that «if our European partners expect that we will let them into sanctum sanctorum – our energy sector – then we expect similar return steps»¹⁹. V.V. Putin stressed that «Russia interests how its interrelations with Europe will develop in the sphere of energy dialog». «If our partners expect some exclusive conditions from our part, then we shall absolutely liberally construct access to the structure of (energy resources) exploration and extraction. But we would like to know what we are going to get in return: will it be access to the structure of resources exploration and extraction in Europe? What main pipelines do you have? If you don't have any – *and this is the case – then you should find a way of adequate compensation*» – this is what the Russian President said²⁰. Indeed, they are getting closed but demand openness, transparency, liberalization from us. What about reciprocity and openness?

European Commission worked out mechanisms which bar the foreign investors from entering the European energy market, informs Reuters referring to the statement of European Commission Chairman Joze Manuel Barrozu²¹. According to him, European Commission plans to elaborate mechanism barring companies from purchasing energy assets in the EU on the grounds of safety. This mechanism will be applied if there is suspicion that the purchase has non-commercial motives²². That's it – «non-commercial motives» for the Russian companies and open market and access to the pipe – for their own ones.

That is, ECT is a game on the Russian field, as the package of the newly coined laws in EU forbids extracting companies to own infrastructure networks²². But it contradicts to the Russian laws as well. It should be reminded that the Decree of the Russian President

of 07.05.1995 № 472 «On the main directions of energy policy and structural reconstruction of the fuel-energy complex in the Russian Federation for the period up to 2010» [4] sets the task of «preserving the energy independence and safety provision of the Russian Federation» [4]. The regulation of prices (tariffs) for energy resources is also carried out on the basis of sovereignty, that is, «in the order stipulated by legislative and other normative acts» [4].

Let us also pay attention to the following unobtrusive feature of ECT. Comparing the Energy Charter and ECT, we suddenly found out the different attitude of these documents to the state sovereignty on energy resources (!). The Charter just «admits the state sovereignty and sovereign rights on energy resources» [5], while Article 18 of the Treaty to Charter specifies the notion of «sovereignty over energy resources». Out of all spheres of «possessing ownership of energy resources», Article 18 leaves just to decide «which geographical areas within its Area to be made available for exploration and development of its energy resources, the optimalization of their recovery and the rate at which they may be depleted or otherwise exploited»²⁴. Not a word about transportation system ownership. «The pipe», as it is clearly seen from Article 18, is being excluded by European Union from the sovereignty of the states, that is, of contracting parties. But where are the main pipelines? Only in Russia. Thus, the document is written for everybody, but implies only the Russian Federation. In the Charter of 1991 European Union admits state sovereignty over resources, but in 1994 it specifies it, but with «a number of» exceptions.

Thus, there is a treaty, but what kind of a treaty! Formally it is a treaty of 51 countries. But actually it is a potential treaty of EU with its main supplier and key partner – as the EU Commissioner Andris Piebalgs likes to say – with Russia. It resembles a list of **principles of noble behaviour** at the energy market. But noble only from the part of Russia. The principle is *make way for everyone, allow everyone, assist everyone*. And keep the position of a poor relation, queuing in Brussels for every license. Actually, this is an agreement of the poor with the rich, the Europe's

¹⁹ Russia expects return steps from EU in the energy sphere. URL: <http://top.rbc.ru/economics/25/05/2006/85943.shtml>

²⁰ Ibid.

²¹ Access to the EU energy market can be barred for foreign investors. URL: <http://top.rbc.ru/economics/13/09/2007/118641.shtml>

²² Ibid.

²³ Russia–EU Summit/Weekly monitoring of political events. Issue № 40 (327). October 22– 28, 2007. URL: http://attach.mail.ru/cgi-bin/readmsg/Monitoring_4007.doc?id=11937296250000014462;0;1&mode=attachment&channel=

²⁴ Art. 18 of the Treaty to Energy Charter of 1994.

demand to Russia to share its riches. Besides, this is a treaty with defiance, with resentment, as if Gasprom has no right to possess its riches. This is an expansive treaty, one with a grudge, with pressure and tough conditions. It is the veiled project of reconstruction of the whole Russian economy, beginning from oil and gas sector. We should foresee its consequences, understand its shackling aims. It is a treaty with a double bottom. As people say: the bait hides the hook. It is an unequal treaty.

To sum it up, the task of the Russian market liberalization pursues one simple objective – to dismember Gasprom up to the extent of its complete dependence on the western transnational corporations. To draw Gasprom out of the hands of the Russian state. Because it is the state that stands on the way of their historic expansive goals. There are already voices in the USA, which sound in unison with the ECT demands (!) and call for the so called **internationalism principle** referring to oil and gas deposits. It means that the states which possess natural energy resources are not their exclusive proprietors, but must share them with economically well-developed countries. According to «PRIME-TASS», «In the USA they are recently publicly discussing the question that the NATO block could play a certain role in the energy infrastructure protection and supply security provision²³.

That the western countries see their task in the gas sector denationalization, they sometimes blab out. For example, the Commissioner on the EU energy policy grieved that «80% of the world oil reserves are in the hands of structures controlled by states. For gas this figure is 73% of the known world reserves»²⁴. He justifies this «concern» by the «consumer's vulnerability to delivery disruption or the price shock derived from that»²⁷. This is the confession. It contradicts to the international principle

of state sovereignty for natural resources. By the way, as we have mentioned, it is declaratively confirmed in the Charter – «the state sovereignty and sovereign rights for energy resources» [6].

Hence the reason for the creation of all-European energy market becomes clear, which is to «squeeze Russia out»²⁸. But it is presented as purely positive. According to the Commissioner on the EU energy policy, «the European energy market», by ECT, includes several constituents. It is, first of all, the fundamental demands on liberalization of all markets outside EU. These are «liberalization» rules of competition, non-discrimination, openness and investors' access to pipelines. The other constituents are declared to be: reduction of the greenhouse effect of gas extraction, increase of the amended resources utilization, increase of energy efficiency. But in the first place there are the same tasks, as in other energy sectors: «division», «competition», «non-discrimination», «market».

One should not make it narrow: liberalization is a broad notion. It includes other constituents as well. For example, «lowering» of the status of subjects participating in the international cooperation and trade – from the public level to the private one. It is not states that trade in gas, but private companies. ECT gently presses the Russian state out of the world gas trading arena, giving room to private companies and civil law instead of international one. The state is left with the right just to «support the development of industrial cooperation in energy sector» and carry out «activity for developing trade and cooperation between the Russian and EU companies actively working in energy sector»²⁹. This is what is stated in Memorandum between Ministries of fuel and energy sector of the Russian Federation and the EU of February 11, 1999. The states cease being the main subjects of international cooperation and trade and

²⁵ European Union tries to persuade Russia not to create the «gas OPEC», 27.03.2007, 18:07. URL: http://www.atonline.ru/analytics/comment/evrosoyuz_ugovarivaet_rossiyu_ne_sozdavat_gazovuyu_opek/

²⁶ Speech at the Vilnius Energy Security Conference by Andris Piebalgs, Energy Commissioner EU's response to the global energy challenges // European Union Delegation of the European Commission to Russia SPEECH/07/623 Vilnius, 11 October 2007.

²⁷ Ibid.

²⁸ World energy sector: a glance ten years ahead / Comments on energy dialogues // Russia in global policy. – 2006. – № 6. – November-December. URL: <http://energydialogue.org.ru/?q=node/46>

²⁹ Memorandum on industrial cooperation in energy sector between Russian Federation Ministry for fuel and energy and the European Commission. Moscow, February 11, 1999. URL: http://www.delrus.ec.europa.eu/ru/p_327.htm#top

limit themselves to just supporting their private companies.

The Charter and ECT make it clear that liberalization also means **lowering of the law level** applied to gas trade. Instead of interstate commercial contracts, like, for example, such conventions as Agreement between Russian Federation and Turkmenistan, Russian Federation and Byelorussia, Russian Federation and Uzbekistan, or Eurasian Economic Community (EurAsEC), ECT activates private law and does not include such parameters as delivery terms, insurance, price, accounts, storage, risks. ECT is a conceptual document regarding cooperation principles. As for the specific commercial conditions, they are transferred to the private-law level, that is, the level of juridical person. The tasks are distributed: ECT is a program conception, while the working documents will be the civil-law contracts between firms, derived from it. The traditional interstate trade agreements include the specific contract terms. One can immediately work and trade in energy resources on their basis.

It may seem not so harmful, if private persons agree on gas trading instead of the state. It may seem so, if you do not take into account the experience and the finance. The western transnational corporations have more experience, than the Russian ones, in carrying out such kind of business. Second, it should be mentioned that the western companies achieve a lot in Russia through bribes and kickbacks. Specialists write about the creation of special «bribe» funds in the western transnational corporations. And it is hard to disbelieve that, as the word «kickback» itself appeared in the Russian business language only in the 90-s, that is, after the western «experienced» business came to the Russian market. Let us read: «Transnational corporations widely use the funds corrupting the hosts' officials. They have a special «bribe» fund» [7].

Thus, the disagreement between Russia and the EU in the Charter and ECT are not of technical, but of ideological character. On the one hand, there is imposing of the «new» globalistic schemes upon Russia. On the other, there are traditional interstate ways of cooperating and trade. The liberal way rigidly defines the Russia's place in the chain of energy delivery, that is, in the international labour division. The traditional one is based on state sovereignty. The liberal

conceptions of energy sector denationalization appeared to be harmful for Russia. The conceptual difference between them is in the **role of the state**. While EU seeks to get rid of the state as a regulator and guarantor of energy supply, giving itself up to market forces (liberalization), both Russia and EurAsEC countries profess pro-state approach. «To confirm the state role in fuel-energy complex development and in promotion the country's economy transition to the energy-saving course»³⁰. The EurAsEC energy Conception puts it clearly – «the increase of manageability and strengthening of the role of *state regulation* in the country's energy supply system»³¹. The fuel-energy resources prices (tariffs), the provision of reliability and safety of energy saving, the increase of energy efficiency of the fuel-energy resources utilization» – all this is subject to state regulation in the fuel-energy complex»³². The energy strategies of Russia and EU diverge regarding the state role in energy policy.

EU and Russia are opposite in one more thing. ECT pays great attention to separating producers, transporters and consumers. While EurAsEC countries prefer not to impose their strategies, principles and models. As for EU, it believes it has the right to impose them on everyone. It puts forward conditions, demands reports, punishes and grants pardon. Unlike the tough ECT, the Eurasian Economic Community Union Concept limited itself (Item 4.1) to just four lines: «The relations occurring in production, transportation, distribution, selling and consuming energy... are regulated in energy sector by relevant agreements signed in accordance with the legislation of the state – EurAsEC member»³³. Many other norms of the Conception promote the strengthening of the state's role in energy sector. Such union can easily comprise countries with different levels of development and political order. They are not required to break dramatically their legislation and political-legal traditions. It would be very useful to

³⁰ Conception of legislation bases on the energy sector of the states-EurAsEC members, October 10, 2000 – P. 2 // Approved by the decree of Inter-parliamentary Assembly of Eurasian Economic Community of 16.06.03 № 4–12.

³¹ Ibid. – P. 2.

³² Ibid. – P. 4.

³³ Ibid. – P. 8.

make a comparative analysis of these two approaches. There we see the reform leading to colonial relations; here we see the equal sovereign cooperation.

The requirement of the «energy materials» market liberalization was not European Commission's invention, but was passed over from GATT of 1947. At the same time the EU citizens assign primary importance not to linearization principle, but to provision of the EU energy safety, security of supply, protection of the consumers against too high prices. «We need energy safety» – D. de Villepin said. – «Let us not rely too much on the mechanical interplay of supply and demand. The citizens do not understand the energy markets liberalization. This is how they explain the growth of bills which they have to pay». Another farsighted community politician also understands the ambiguous role of liberalization. Karl-Heinz Grasser, the Austrian Minister of Finance and the present Head of the Council of finance and economy EU ministers (ECOFIN), said the following regarding Russia: «We are, of course, convinced that the market approach is better than the state one. But each state should **define for itself, what suits it most**». But Brussels want another thing – to break economic systems, if they do not conform to EU and GATT and build them into global and expansive schemes.

Indeed, liberalization is a conceptual term, the disruptiveness of which is proved by practice. Expulsion of the state from economy, as is demanded by the American political doctrine, in Russia will lead to the social tension growth, national market chaotization, dismembering of Gasprom, its privatization by the

western transnational corporations. In ECT we are getting the plan of the veiled **internationalization of Russian energy resources**. Its final point is turning Russia into a resources deposit for the USA and EU and the loss of its sovereignty over energy resources. Then this scheme will be transferred to other sectors of Russian economy: *market, competition, liberalization, non-discrimination, free access, openness, plus horizontal dismembering*.

That is why the answer to the question: Should Russia follow the western liberalization model (in gas sector) and thus lose its sovereignty, or persistently follow its national interests? – seems to be obvious.

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