

Basic principles of possible new international legal framework in energy

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OPTIONS OF MID-2006

- Finalisation of Transit Protocol (TP) consultations EU-RF (draft text was on the table in mid-June; only few wording on the Clause 20 were subject to finally confirmation)
- Transfer to multilateral negotiations on “three outstanding issues” of the draft TP based on joint proposals of RF and EU
- Re-vitalization of ECT ratification process.

Uncertainties:

- Russian concerns on some ECT provisions
- Inefficiency of the ECT procedures in crisis periods (experience of start of 2006)

FROM MID-2006 TO APRIL 21, 2009

- On June 6, 2006 EU rejects from a compromise text prepared by experts of both sides
- G8 Summit in Sanct-Peterburg adopts Declaration on Energy Security
- In RF a work on analyzing ways to modernize ECT is developing
- A Strategic Group to review ECT effectiveness in a changing world is formed by RF proposal

Uncertainties:

- EU resists any move to modernize ECT
- G8 Declaration has no tools for implementation of its principles (“no institutionalisation”)

CONTINUATION

- EU “Third Energy Package” is on its way since January, 2007. Its formulas for Third Countries obviously breach ECT provisions (Authors are not aware of ECT? Or they consider ECT as a “dead story”?)
- In RF a concept of “universal legal framework” (and possibly – institutional framework) for energy topic is developing
- TP multilateral consultations are on the way (meeting resistance from EU side, RF presents its vision of process and results of EU-RF previous work and meets support of other countries incl. transit countries)
- In Strategic Group meetings an understanding of need to adopt ECT to new challenges and the wording “ECT modernization” is moderately progressing
- Reliance on both ends that negotiations on the new PCA will be a simpler format for agreement

CONTINUATION

- Disappointments of January 2009 transit crisis, role of Charter Secretariat and inefficiency of existing mechanisms
- Possible Package Deal in the ECT Process:
 - Finalisation of Transit Protocol (TP) negotiations (need of political decision on EU side to agree forms of TP applications inside EU; wording and multilateral final consent on the rest of the text)
 - Understanding in the framework of Strategic Group, then EU-RF on bilateral basis (possibly as a part of new PCA negotiations) and then Charter Conference on principles of the ECT modernization and further process of legal energy basis globalization
 - Possible ratification at some stage of this process.

Uncertainties:

- Readiness of both sides (EU and RF) to accept any of these steps
- Specifics of the ECT that limit its global role

2009, April 21 and since then

- President Medvedev' Conceptual Approach (CA, April 21) incl. Main Provisions and Measures to prevent transit crisis. An approach to universal format reflecting contemporary challenges
- Alternative – to modernize ECT or to write down new document?
- EC Leaders express that they can't exclude ECT out of new legal structure
- RF Government decision to withdraw from temporary application of the ECT (July 30)
- Charter experts consider that most of the CA provisions are either within ECT or can be incorporated in the Charter process
- EU approves Third Energy Package in the form that puts specific and not precisely defined requirements before companies of Third Countries
- New PCA negotiations are on very early stage.

BUT:

- How the goal to reach an universal format can be achieved?
- How the lack of legal basis in place (i.e, between EU and RF) can be filled?

Where would be a way forward?

- ECT is:
 - An integrated document, and every Contracting Parties (CP) should agree with it fully
 - Rather vague in some aspects and very detailed and demanding in others.
- This excluded a number of potential participants from the CP status (USA, Norway, Australia, Canada, OPEC members...)
- New approach would be a combination of:
 - “Concept plus”
 - “ECT plus/minus”

CONTINUATION

- “Concept plus”:
 - An universal agreement on principles of cooperation in the energy sphere. Could be based on CA suggestions, G8-2006 Declaration, overall acceptable provisions of the ECT
 - A legally binding document with means to enforce its implementation.
 - CPs of “Concept plus” are full members of new “Energy Club”.
- “ECT plus/minus”:
 - A system of sectoral, area/subject matters’ oriented documents
 - Members of “Energy Club” may join any part of them (“minus”)
 - They cover wider area than ECT itself and its Protocols (“plus”)
 - They include actual aspects as prevention of transit crisis etc.

CONTINUATION

Open questions:

- Where it can be worked out?
- How existing ECT members (as EU) would be participants of the “Energy Club”?
(for instance, through
 - parallel modernization of the ECT to reflect new areas and improved subjects, and
 - reflection of their special understandings in the body of new documents. and
 - forming “sub-clubs” of deeper integrated parties).

Not very easy but...