

ADMINISTRATIVE AND LEGAL MEASURES TO OVERCOME THREATS TO ENERGY SECURITY OF UKRAINE IN THE OIL AND GAS SECTOR

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Annotation. Under martial law conditions in Ukraine since February 24, 2022, the oil and gas sector has faced unprecedented threats to energy security. This article aims to comprehensively analyze the state's administrative and legal measures in overcoming threats in the oil and gas industry during martial law, focusing on the fuel and gas sectors.

The study employs various methods, including formal legal analysis of regulatory legal acts, the formal and dogmatic method to deduce the content of legal regulation for energy security in the oil and gas sector, and the systematic method to examine specific administrative and legal measures within the broader framework of Ukraine's energy security.

The study delves into the administrative and legal measures implemented by Ukraine to address threats in the fuel and gas sectors. In the fuel sector, measures include simplifying bureaucratic procedures, prioritizing fuel imports from the EU, altering pricing mechanisms, and tax relief. The gas sector involves legislative changes, moratoriums on pricing and tariff increases, funding allocations, export bans, and the involvement of large energy companies.

Since martial law's introduction, Ukraine applied diverse administrative and legal measures to enhance energy security in the oil and gas sector. The effectiveness of these measures requires a comprehensive approach, considering potential negative consequences. Strengthening the role of energy entities and aligning antimonopoly legislation with consumer protection is crucial. Timely legislation addressing the energy sector functioning under extraordinary circumstances is recommended for proactive threat response. Finally, the paper highlights the need for sustainable development criteria, emphasizing efficient energy resource use and the integration of renewable energy sources.

Key words: energy security, martial law, administrative provision of energy security, fuel crisis, oil and gas industry.

1. Introduction.

Under martial law conditions in Ukraine, starting from February 24, 2022, administrative and legal measures have become critical in effectively ensuring the country's energy security. The level and number of threats the state faces in oil and gas, electric power, and nuclear security are unprecedented, which reveals the need for a detailed analysis of the existing experience of administrative and legal measures used during this period.

In previously published studies, we considered the general provisions on ensuring energy security in martial law conditions [1, p. 42-49], on which specific examples of administrative and legal measures applied by the state should be considered in extra detail. It is appropriate to consider such measures in energy security and to devote this article to their application problems in the oil and gas sector. This area first encountered a wide range of threats related to the interruption of usual supply chains of energy resources, accompanied by a panicked mood of the population. It provoked a large-scale crisis in this area.

2. Analysis of scientific publications.

Scientific research and contributions to the field of energy security are considered in the scientific works of such scientists as V. Baranik, Z. Varnalii, Yu. Vashchenko, A. Galchynskiy, V. Geets, A. Ilienکو, Yu. Irkha, B. Kormych, M. Kovalko, R. Kotsyuba, L. Krivorutskiy, V. Lipkan, V. Lear, A. Novitskiy, R. Petrov, G. Ryabtsev, V. Saprykin, N. Sukhin, O. Sukhodolya, A. Sukhorukov, N. Stuchynska, M. Timchenko, V. Tochilin, A. Khalatov, N. Fialko, A. Shevtsov, A. Shidlovskiy, O. Shevchenko and others. At the same time, these works did not consider energy security issues and its administrative and legal support during martial law.

3. The aim of the work.

This article aims to comprehensively analyze the state's main administrative and legal measures to overcome threats and solve problems that arise in the context of energy security in the oil and gas industry during martial law.

4. Review and discussion.

To achieve the goal, we will consider the administrative and legal measures used by the state to overcome threats in the oil and gas industry in two directions, namely: in the fuel sector, where chronologically, the first crisis occurred after the start of a full-scale war, and also in the gas sector, since the issue of gas supply and heat was significant for the passage of the first heating season of 2022-2023 under martial law.

In the fuel sector, the primary measures concerned simplifying bureaucratic procedures and prioritizing fuel import from the European Union (from now on referred to as the "EU"), i.e., increasing its daily supplies.

Thus, in May 2022, the Cabinet of Ministers of Ukraine reported on the adoption of the following set of measures by the Government to solve the fuel crisis: 1) cancellation of permits for the entry of tankers; 2) ensuring the possibility of accepting fuel in ports, as well as obtaining the consent of EU countries for the guaranteed acceptance by their ports of tankers with fuel for the Ukrainian market; 3) change in the mechanism of pricing regulation of the costs of fuel; 4) ensuring the priority of registration of fuel at the border by the customs and border service; 5) use of pipe transport from Hungary; 6) seizure of seized Russian and Belarusian fuel; 7) implementation of system purchases by the national operator of NJSC "Naftogaz of Ukraine" to ensure rhythmic supplies and long-term contracts [2].

This led to both positive consequences in the form of growth in the level of diversification of sources of supply and storage of oil products and negative consequences in the form of growth in the prices of the corresponding energy resources, as well as a boost in cases of abuse in the fuel market. In addition, the need to make diversified reserves of petroleum products in the conditions of martial law poses the task to the state to develop the appropriate critical infrastructure, in particular, in the form of protected storage facilities, as well as reliable protection of such facilities.

Reducing the tax burden in this area was an obvious step to overcome the threat of fuel pricing growth. Thus, on March 15, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the effect of norms during the period of martial law" No. 2120-IX, which canceled the excise tax on gasoline, heavy distillates (diesel fuel) and liquefied gas, and the value-added tax on the import of such petroleum products was reduced to 7 percent.

After the stabilization of the fuel market in September 2022, the Verkhovna Rada of Ukraine, by the Law of September 21, 2022 No. 2618-IX [3], returned the excise tax on fuel, leaving the VAT rate at

7 percent for the period of the legal regime of martial law, but no later than until July 1, 2023. In addition, an exemption was prescribed regarding the zero rate of excise duty for fuel if its customer is the Ministry of Defense of Ukraine according to the terms of the contract.

Another means of overcoming the threat of fuel pricing increases was the Government's introduction of state pricing regulation. However, some analysts expressed the opinion that this did not in any way affect the overcoming of the shortage of petroleum products but negatively affected the predictability of prices. It was reported that unscrupulous sellers ignored pricing restrictions, and the distortion of the market situation is indicated by the fact that wholesale prices are significantly higher than retail prices. From this, it is concluded that the state in the fuel market, instead of direct administrative methods for setting prices, should switch to implementing antimonopoly mechanisms and applying legislation in consumer rights protection [4].

In addition, in connection with the growth in the number of violations of the limit prices for fuel, measures were taken to strengthen legal responsibility in this area. In particular, the Government authorized regional military administrations to monitor pricing settings [2]. However, in May 2022, the Cabinet of Ministers of Ukraine canceled establishing maximum fuel prices by Resolution No. 594 [5].

The changes also affected administrative responsibility in this area. Thus, in October 2022, the Verkhovna Rada of Ukraine by the Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses Regarding Strengthening Administrative Responsibility for Illegal Fuel Trade" dated October 6, 2022 No. 2657-IX [6] introduced a new Article 161-1 into the Code of Ukraine on Administrative Offenses, which provides for liability for wholesale or retail fuel trade without state registration by the business entity or without obtaining a document of a permissive nature, if its receipt is provided for by law (except in cases of application of the principle of tacit consent).

A proper and adequate level of legal responsibility should accompany and grow the effectiveness of administrative and legal measures to overcome threats, particularly in the energy sector.

In the context of the administrative and legal measures taken to overcome the fuel crisis, it is appropriate to note two large-scale studies of the Antimonopoly Committee of Ukraine (from now on referred to as the "AMCU"), which concern the setting of fuel prices during 2022. Thus, the AMCU emphasizes several problematic points, particularly regarding the need for extra reliable information on fuel circulation in Ukraine by state bodies and the state. This results in the impossibility of forecasting and planning actions on the fuel market. In addition, the insufficiency of actions aimed at reducing the shortage of petroleum products in the conditions of martial law was noted. For example, it was pointed out the non-implementation of Resolution No. 638 of the Cabinet of Ministers of Ukraine dated May 27, 2022, by which JSC "Ukrzaliznytsia" is authorized to perform the functions of the customer for the procurement of petroleum products and related services related to the purchase of petroleum products under foreign economic and other agreements (contracts) with further implementation on the domestic market. The ineffectiveness of such a mechanism as actual inspections by authorized bodies and the imposition of fines on business entities was also noted, as this does not eliminate the possibility of committing a violation in the future.

In this regard, the AMCU, in particular, noted the need for the Cabinet of Ministers of Ukraine to take measures regarding 1) defining a state authority and entrusting it with the authority to draw up and maintain actual and forecast balances of fuel supply and demand on the relevant market in order to prevent shortages; 2) initiation of amendments to the Tax Code of Ukraine regarding the resumption of submission of electronic documents containing data on actual fuel balances and volume of fuel circulation, registration in relevant registers of tax or excise invoices, adjustment calculations [7].

Large enterprises in the energy industry also played an essential role in ensuring energy security in the fuel sector. Thus, JSC "Naftogaz of Ukraine" was involved in solving the problem of eliminating the shortage of petroleum products in Ukraine, which contributed to the stabilization of the fuel market. JSC "Naftogaz of Ukraine" opened its network of gas stations based on the seized network, which was transferred to the management of the limited liability company "Naftogaz OilTrading" by the Decree of the Cabinet of Ministers of Ukraine dated May 13, 2022, No. 385-r [8]. Such a transfer

took place based on Article 21-1 (Features of asset management in exceptional cases) of the Law of Ukraine "On the National Agency of Ukraine on Identification, Search, and Management of Assets Obtained from Corruption and Other Crimes" of November 10, 2015 No. 772-VIII on the initiative The National Agency for Identification, Search and Management of Assets Obtained from Corruption and Other Crimes and the Ministry of Energy of Ukraine.

It should be noted that the measures the state took made it possible to overcome the fuel crisis and minimize the risks in the oil market associated with the war. However, it is impossible to predict that such a crisis cannot be repeated confidently in the current conditions.

Based on the conducted analysis, applying administrative and legal measures in the fuel sector often results in the emergence of accompanying threats. For example, a growth in the volume of imports of energy resources from the EU increased their pricing for end consumers. The objective conditions in which the fuel market found itself led to a growth in the number of offenses in this area. Thus, to overcome threats to energy security in the fuel sector, administrative and legal measures must be applied comprehensively, and the negative consequences they can lead to must be considered.

In general, we can group the applied administrative and legal measures in the fuel sector as follows: 1) measures aimed at increasing the volume of energy resource imports, diversifying their supply sources, and simplifying the relevant administrative procedures; 2) diversification of storage of oil products, as well as the issue of protection of the relevant critical infrastructure; 3) minimizing the risks of pricing increases, in particular, in the form of reducing the tax burden and state pricing regulation; 4) strengthening legal responsibility; 5) involvement of large energy companies to overcome threats to energy security in this area.

In the future, Ukraine should also adhere to diversifying sources of supply and storage of oil products, creating protected storage facilities. In addition, other ways exist to overcome threats to energy security associated with destroying one's oil refinery. A promising direction is the production of alternative fuel, which simultaneously requires a clear regulatory framework. In addition, as emphasized by O.S. Yara, O.V. Artemenko, Ya.V. Zhuravel, N.A. Lytvyn, the development of energy-saving technologies and renewable energy sources is essential, for which the Government should approve and implement the State Targeted Economic Program for Energy Efficiency and the Development of Renewable Energy Sources for 2022-2026, creating the necessary conditions for increasing the energy efficiency of the economy in terms of reducing the consumption of traditional energy sources, increasing energy self-sufficiency due to the use of local energy raw materials from renewable sources [9].

Turning to the gas sector and, in particular, the issues of gas and heat supply under martial law, it should be noted that according to official information from state authorities, preparations for the 2022-2023 heating season began in advance, taking into account various scenarios of its passage, orienting in first of all on the most pessimistic of them [10].

In July 2022, the relevant legislative framework regarding gas and heat supply features was adopted. In particular, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the features of regulating relations in the natural gas market and the field of heat supply during martial law and the subsequent restoration of their functioning" No. 2479-IX, which introduced several significant legislative changes: 1) introduction during the period of martial law and six months after its termination or cancellation, a moratorium on pricing and tariff increases in the natural gas market and the field of heat supply; 2) prohibition of forcing a household consumer to pay debts; 3) establishment of a complex of compensatory mechanisms to cover the losses of the relevant business entities caused by the implemented moratorium, at the expense of the State Budget of Ukraine [11].

On the day of adopting the law mentioned above, corresponding changes to Ukraine's state budget for 2022 were also adopted for its implementation [12]. On August 30, 2022, another law was adopted, which allocated funds to the Ministry of Energy of Ukraine to purchase natural gas for the 2022-2023 heating season due to a growth in external borrowings [13].

Corresponding measures were also taken at the level of central executive bodies, in particular: 1) a ban was introduced on the export of natural gas of Ukrainian origin [14]; 2) the Procedure for the

functioning of the biomethane register [15] was approved, as well as the issue of its supply to gas networks, which was directed to the launch of the biomethane market in Ukraine by the Law of Ukraine "On Alternative Fuels"; 3) natural gas market participants are assigned special responsibilities to ensure general public interests in the process of functioning of the natural gas market [16]; 4) an initiative was introduced to create so-called "Points of Invincibility," which should maintain the conditions minimally necessary to preserve the life and health of the population in the event of a disruption of the stable operation of life support systems [17].

As in the case of the fuel crisis, the state resorted to involving large energy companies in overcoming threats to energy security. As we noted above, the participants in the natural gas market were assigned obligations to ensure the interests of society as a whole. In addition, we can note the Law of Ukraine, "On Optimizing the Ownership Structure of the Operator of the Gas Transportation System of Ukraine," in the final provisions of which it is determined that during the period of martial law, a gas supplier of "last resort" (that is, a supplier who, under certain circumstances, cannot refuse to provide services to the consumer) is determined by the Cabinet of Ministers of Ukraine without competition [18]. It has been determined that "Naftogaz of Ukraine" is such a supplier [19].

Among the legislative changes adopted later, it is appropriate to single out the Law on the Procedure for Certification of Gas Storage Operators No. 2850-IX, which implements changes to Regulation (EC) No. 715/2009 and Regulation (EC) No. 2017/1938 into Ukrainian legislation, which entered into force in the EU in July 2022. By the law mentioned above, the Energy Regulator (the National Commission for State Regulation in the Energy and Utilities Sectors) was empowered to carry out the certification mentioned above and was also tasked with verifying the compliance of the gas storage operator with the requirements to prevent risks to the safety of natural gas supply [20].

In addition, important from the point of view of energy security in the oil and gas sector, as well as in the framework of the approximation of Ukrainian legislation to EU legislation, is the Law of Ukraine "On Minimum Reserves of Oil and Petroleum Products," the draft of which was adopted on November 21, 2023, and is currently sent to the President of Ukraine for the signature and official publication. This law was adopted to growth the level of energy security of the state and ensure the uninterrupted supply of oil and petroleum products to the domestic market of Ukraine in the event of a crisis in the oil and petroleum products market by implementing the requirements of the Council Directive 2009/119/EC, which provides for the creation of a minimum level of reserves that equal to 90 days of average daily net import or 61 days of average daily consumption, whichever is higher. The law provides that the creation of minimum reserves of oil and petroleum products is carried out in stages, with the achievement of the volume specified in the first and second parts of Article 8 of the specified law within eight years. At the same time, obligations to create minimum oil reserves by the requirements of this Law arise among market entities six months after the month martial law is terminated or abolished in Ukraine [21].

In the context of the adopted legislative changes, we note that their timeliness plays an essential role in effectively applying administrative and legal measures in energy security. Given this, we note the expediency of detailed legislation, which concerns the features of the functioning of the country's energy industry under extraordinary circumstances, even in peacetime, which allows timely response to threats to energy security in the event of particular conditions.

5. Conclusions.

Since the introduction of martial law in Ukraine, the state has applied a wide range of administrative and legal measures to overcome threats to energy security in the oil and gas sector. Such measures are mainly related to increasing the volume of imports of energy resources from abroad, diversifying the sources of their supply and storage places, and protecting the relevant infrastructure.

The state's application of relevant administrative and legal measures must be comprehensive and consider possible negative consequences. For this purpose, moratoriums on pricing and tariff increases, their state regulation, reduction of the tax burden on economic entities and consumers, and strengthening of legal responsibility can be introduced.

It is also appropriate to highlight the strengthening of the role of business entities in the energy sector, which acquires a special status and bears increased responsibility for taking measures to overcome threats to energy security. Strengthening the role of such entities in the domestic market should be accompanied by the effectiveness of antimonopoly legislation and the protection of consumer rights.

Another important aspect is the need to provide up-to-date information on the level of consumption of energy resources and its further planning, which requires the presence of a responsible state body with appropriate powers.

The available experience also proves the expediency of implementing in the legislation of all countries particular and detailed provisions regarding the features of the functioning of the country's energy sector in the event of the appearance of special conditions (for example, in the case of the introduction of martial law), in particular in the field of ensuring energy security. This will significantly improve the ability to respond to threats promptly in the event of particular conditions.

In addition, the criteria of sustainable development should be considered, where attention is paid to the efficient use of energy resources and the use of renewable energy sources.

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