



# BULLETIN

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## The Russian Proposals for International Energy Cooperation

Ernest Wyciszkievicz

*Russian proposals for new rules of international energy cooperation primarily serve its own particular interests. The rearrangement of the existing system is a maximum aim, but not a very realistic one. The oft-emphasized global dimension of these proposals hides a desire to improve operating conditions in the EU thanks to the abrogation of Energy Charter Treaty principles, and even to participate indirectly in the shaping of European energy policy. It is also meant to secure Russian interests in the "near-abroad," mainly by reinforcing Russian control of transit routes and speeding-up the realization of gas infrastructure projects.*

On 21 April, the President of the Russian Federation (RF) presented the "Conceptual Approach to the New Legal Framework for Energy Cooperation (Goals and Principles)." Russia's principal motive in working out this document is its opposition to the Energy Charter Treaty (ECT). Russia considers that the ECT does not prevent or resolve disputes and does not reflect changes that have taken place in energy markets in recent years. The Russian concept would supposedly restore a balance in relations between producer and consumer countries. As in the case of Russia's proposal to reform the European security architecture, Moscow thinks that existing instruments in the sphere of energy should be adapted to the new conditions.

**Principles of Energy Cooperation.** Russia calls for basing the new order on the following principles: (1) the indivisibility of global energy security and the co-responsibility for it of producer, consumer and transit countries; (2) recognizing the security of supply and demand as fundamental elements of global energy security; (3) unconditional recognition of states' sovereignty over their domestic energy resources; (4) non-discriminatory access to international markets; (5) transparency of operations in all market segments (production, transport, sale); (6) non-discriminatory support and protection of investments and infrastructure projects; (7) supporting the exchange of energy assets between entities of exporting and importing countries; (8) a guarantee of uninterrupted transit and care for the technical effectiveness of energy infrastructure, including transit infrastructure; (9) mandatory consultations and coordination concerning the shaping of the future energy balance structure, the diversification of supplies, regulations of production, trade, transit and consumption, planning and realization of infrastructure projects that are important for global or regional energy security; (10) creating early warning mechanisms involving producer, transit and consumer countries.

**The Question of Transit.** Russia's proposals are accompanied by postulates for a new agreement on transit. These were formulated under the influence of the gas dispute with Ukraine which the Russians see as a "transit crisis." A significant factor in this context was the EU-Ukraine declaration about the modernization of Ukraine's gas networks, thus making their future integration with European networks possible. In keeping with the Russian concept, the new agreement should contain: (1) universal terminology concerning transit (whose aim is almost certainly the recognition of Central European EU members as transit countries and not as a part of a single EU market); (2) transparent principles for setting transit fees; (3) an obligation for the parties of the agreement (states) to ensure that their entities abide by these principles; (4) assurances about the unacceptability of transit limitations or interruptions; (5) a definition of the responsibility of the parties for losses due to non-performance of obligations; (6) a description of a transit coordination mechanism along with interven-

tion institutions in case of a dispute; (7) a clause about a preference for diplomatic dispute resolution methods.

**Assessment.** The new Russian project is intended to undermine energy cooperation principles worked out in the 1990s when Russia was going through a time of crisis. Russia presently wishes to play a leading role in shaping the new rules. Russia's global rhetoric is but a facade for the realization of its regional interests, primarily in the EU and the "near-abroad." Russia is interested in easier access to EU markets, increased control over the transit of energy resources, and control over the fuels sector. It is also aiming to use those proposals in talks with the EU about a new framework agreement. Russia could thus shift the weight of the negotiations in energy matters from the problem of incorporating part of the ECT provisions into that agreement to the issue of building a new agreement of greater scope and more actors involved.

Russia is striving to alter or replace the ECT by using the recent gas crisis. It is also interested in weakening the provisions about procedures for dispute settlement through arbitration. The suggested preference for diplomatic methods over legal ones, in conjunction with the possibility to appeal to non-binding arbitration standards recommended by the UN, would constitute a step backwards in relation to the provisions of the ECT. Russia's efforts also serve to address a more immediate problem. Russia wishes to detract attention from the issue of the provisional application of the ECT, which it is obligated to do as it signed the ECT without submitting the appropriate reservation. Legal proceedings initiated by Yukos shareholders are presently under way before the Arbitration Tribunal at The Hague regarding Russia's failure to abide by the provisional application of the ECT requirements. An unfavorable verdict for Russia would have important consequences for the foreign operations of Russian firms which benefited from the expropriation of Yukos assets.

Russian proposals also have implications of an asymmetrical nature that are hidden beneath the slogan of restoration of balance. Instead of equal access of the parties to all market segments based on the principle of reciprocity, Russia wants the "exchange of assets" to be recognized as the basis for business relations, along with free access to international markets with the simultaneous absence of any mention of access to domestic markets. In this manner Moscow would lift the central element of Russian firms' strategy to the rank of a general principle, thus making it easier for them to invest in European markets thanks to the EU's liberal regulatory regime. At the same time, the influence of European firms on the strategy of Russian ones would continue to be limited, irrespective of the assets owned, due to Russia's restrictive legislation. Another example of deepening asymmetry is the point on the need to coordinate actions aimed at shaping the energy balance structure, diversifying supplies, etc., which can be seen as the reflection of a desire to gain indirect influence over the EU decision-making process and the shaping of European energy policy.

Furthermore, Russia is using its proposals as a means to push for the continuation of the Nord and South Stream gas projects and demands international support for infrastructural projects important for global and regional energy security. It is not known, however, what criteria are to define the status of a given project. The Russian proposals turn these projects into a political and legal problem, not a market one, whereas the basic criterion should be a calculation of benefits and costs.

Russian proposals are also intended to reduce the influence of transit countries over infrastructure and transit. Without questioning the legitimacy of subjecting transit to international oversight, it would be fitting to ask about Russia's own readiness to recognize itself as a transit country bound to make its networks accessible to the transit of Central Asian gas to Europe on market principles. In keeping with Russia's proposals, such transit should be enabled and subjected to international monitoring.

The Russian project should also be seen as an attempt to determine the course of future discussions, not to build a new system, as it is not very probable that a formula acceptable for all parties in energy relations will be found given their different interests and challenges. Russia's aim is a rather negative one: To undermine the present order by working out a general agreement that would not entail any definite obligations, but which could easily be used as a political instrument.

Russia is interested in making use of present conditions—when energy markets are sellers' not buyers' markets—to secure itself against a possible reversal of trends, a sign of which was the drastic fall in the price of oil during the last year. The implementation of Russia's proposals is not very probable, because the conviction about the dysfunctionality of the present system is not widespread. The proposal to subject all energy resources and its by-products to the proposed new principles is equally unrealistic given the fundamental differences between various markets for these products. It is the more misplaced as the present problems with transit and supply concern primarily natural gas, and only to a lesser extent oil and its by-products.