

# Third EU Energy Package: Certain Key Issues from Foreign Investor's Perspective

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**REGULATION AND LIBERALIZATION  
OF ENERGY MARKETS:  
RUSSIAN EXPERIENCE  
AND THE EU 3<sup>rd</sup> ENERGY PACKAGE**

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## Third Energy Package and Shippers' Rights

Open, non-discriminatory, transparent regulated access to the network.



BUT

Shipper bears costs of liberalization and security of supply.

Shipper has no protection of existing transmission contracts which may be better to him than regulated contracts.

## Third Energy Package and Investment Rights

Areas of concern:

1. *Unbundling provisions*: separation of transmission from production and supply.

For existing transmission systems: one of three models (FOU,ISO,ITO).

For new transmission systems: only FOU unless an exemption is granted.

2. *Third Countries Clause*: special certification procedure for the EU transmission system operators under foreign control.

## Concern No. 1: Uncertainties - Examples

- Art 9 (1) of the 3<sup>rd</sup> Gas Directive prohibits the same person to simultaneously exercise control over transmission system operator and over production/supply undertaking.
- ***Geographical scope is unclear:*** is a person which controls transmission system operator outside the EU, not allowed to control production/supply undertaking in the EU?
- ***Subject-matter scope is unclear:*** is non-vertically integrated operator affected by FOU?

## Concern No. 1: Uncertainties - Examples (cont.)

- Article 36 of the 3<sup>rd</sup> Gas Directive allows new major infrastructure projects to be exempted from FOU if certain conditions are fulfilled.
- Is exemption not available for “external pipelines” (not interconnectors between the EU Member States)?
- Will newly built infrastructure have to be divested upon expiry of the exemption?

## Concern No. 2: Compatibility with International Public Law

- International treaties comprising Russia and the EU: Partnership and Cooperation Agreement 1994, Energy Charter Treaty 1994.
- Bilateral investment treaties between Russia and the EU Member States.

How Unbundling provisions and Third Countries Clause correlate with these international public law agreements?

## Concern No. 2: Compatibility with International Public Law (cont.)

- ❖ Fair and equitable treatment vs uncertainties of the Third Energy Package.
- ❖ Protection against expropriation vs Unbundling.
- ❖ National treatment vs Third Countries Clause.



1. Clarification of key provisions of Third Energy Package is needed for predictable and uniform application and for compliance with international agreements.
2. External dimension should be better addressed in defining rules of play on internal European gas market.
3. Platform: energy chapter of new Basic agreement between Russia and EU or multilateral instrument on energy cooperation.



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**THANK YOU**

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