

The Legislative Issues of Ukrainian Energy Transit System Integration into the EU Infrastructure

The paper presents the results of the analyses concerning Ukrainian oil and gas transit infrastructure integration into the European Union energy market. The material characterizes the EU energy supply system and identifies the role of Ukraine as a transit country. The article deals with the legislative issues of integration while studying the main documents, that determine the conditions and terms of the Ukrainian transit system further development in accordance with the European standards. The material can be used while studying the common European energy market tendencies and development directions, including the issues on cooperation with Ukraine as the transit country in order to ensure stable oil and gas transmission and to provide the main energy security principles.

Key words: transit, infrastructure, energy, oil, gas, pipeline, analysis, transit country.

Introduction. Ukraine is a key transit country that form the essential road for energy supply to the EU and has expressed its wish to be integrated in the EU and South East Europe energy markets. The European commission spokesperson on energy Marlene Holzner stated that Ukrainian gas transporting system is one of the main pipelines to deliver gas to Europe: «Unique geographical location of Ukraine and its gas storage capacities mean that Ukraine can offer increased flexibility of gas supply» [11]. The gas transit system of Ukraine represents the backbone of gas supplies to Europe from Russia gas exports to the EU, as well as from the Caspian region. Energy sector is a sphere that will continue to be at the centre of EU-Ukraine relations and where cooperation will continue to grow substantially over the coming years. By focusing on maintaining by any means existing price preferences for natural gas, Ukraine has left aside the issue of energy efficiency, creation of transparent energy market and its modernization according to European standards. Such situation can result in loss of attractiveness of transit facilities for European partners, their reorientation on alternative sources and ways of energy supply and eventually complete elimination of the Ukraine from energy relations in Europe [5]. At the same time, implementation of European norms and standards, internal reformation and accession to the European energy market can increase the importance of Ukraine in ensuring energy security of Europe.

The European Commissioner for Energy Günther Oettinger stated that «Ukrainian Gas Transporting System is the most important in Europe, however, its maintenance and renovation requires considerable investments» [13]. The European Union's hydrocarbon energy supply depends heavily on imports. While the European Commission has recommended diversifying and increasing domestic resources, notably with renewable resources which should grow to 20 % by 2020, European dependence on hydrocarbon imports will remain important. Particular attention must thus be paid to the question of transportation, and also to the countries of origin, investments in infrastructure, their protection, relations with transit countries. The role of transit countries in the construction of infrastructure is very important and it is a potential factor of disruption between producer and consumer. Creating new oil and gas infrastructure makes it imperative to pay special attention to geopolitical issues, and an «energy diplomacy» that stresses that pipelines are not only commercial concerns but also fall into the political realm, sometimes being too politicized.

The methodological basis consists of comprehensive and systematic approaches that examine the energy supply infrastructure functioning in dialectical unity with the energy transit system in order to provide energy security. The study used generally accepted methods in economics study (logical, structural, abstraction, historical methods), which allowed to study the development of legislative cooperation between the EU and Ukraine in two main directions: a) the priorities of the EU energy infrastructure development; b) the collaboration issues of Ukrainian energy transit system integration into the EU energy supply chain. The material proposed in this article is based on the analytical works, reports and official documents concerning the legislative issues of Ukrainian energy transit system integration into the EU infrastructure.

The *aim* of the article is to determine the legislative issues of the Ukrainian oil and gas transit infrastructure integration into the European Union energy market. The aim is coccretized in the following *tasks*: to characterize the EU energy supply system, the infrastructure of oil and gas transmission and to identify the role of Ukraine as a transit country; to study the legislative bases for Ukrainian energy transit

infrastructure integration into the EU energy network; to analyze the conditions and terms of the Ukrainian transit system further development in accordance with the European standards.

Results. The EU's energy policy has several objectives, including the establishment of a truly integrated European energy market, enhancing energy efficiency, and mitigating risks by diversifying energy supply. In order to establish a genuine European energy market, the EU will have to invest around €1 trillion in its energy infrastructure by 2020. According to Herman Van Rompuy, President of the European Council, energy efficiency is one of the key issues being tackled in the EU's internal and external energy talks, including those with Ukraine [14]. The EU's dependence on a few major energy suppliers has encouraged the Union to put diversification of supply at the center of its energy policy. The EU's goal is to have no individual Member State reliant on a single energy supplier.

The EU energy infrastructure is very specific in several ways. First, it is expensive and once a pipeline is built, it is not easily changed. It shapes the energy mix and industrial structure of the given country for many years. Second, because of the high costs associated with new transmission infrastructure, it is economically unsustainable (and often administratively and physically impossible) to compete with the existing grid by building a parallel one. Transmission or distribution infrastructure is a de facto natural monopoly. It is almost always regulated, mainly to ensure that other market participants gain access to the infrastructure and can compete on an equal basis with its operator [9].

The existing energy infrastructure of the EU is old. Better part of it was built in the 1960s and is now approaching the end of the life-cycle. The European gas and electricity network operators estimate that the upgrades and installation of new power lines will cost about €140 billion. At least €70 billion will be needed to be invested to upgrade ageing gas pipelines. Other estimates suggest that over the next years, as much as €1 trillion might be needed to develop the infrastructure in an adequate way [3].

The gas infrastructure will need to undergo changes. It is expected to play an increasing role in the European energy mix because of several factors: the shift away from nuclear energy in countries such as Germany, expected shale gas boom, as well as the gradual replacement of coal-fuelled power plants with gas-fuelled ones. The shift to RES, paradoxically, also increases need for gas: because wind and sun are not always available, the grid needs to feature another flexible source to step in when RES fail. Gas is the most convenient such balancer because gas-powered plants can be fired up relatively quickly. As indigenous European conventional gas production decreases, import infrastructure will also need to be strengthened. New transmission pipelines will be required, as well as new liquid natural gas (LNG) terminals, especially if the US decides to export part of its shale gas production (it is restricting exports at present) [3].

Construction of pipelines between EU member-states is likely to receive more attention in the coming years. This is partly because of energy security concerns but also because good interconnections improve market liquidity, and strengthen the hand of the gas trading hubs and of the purchasing countries vis-à-vis their suppliers. The greater the liquidity and the more gas is traded on hubs (rather than through long-term contracts), the greater the likelihood of lower prices (linked to spot market).

The main gas pipelines, actual and projected, connecting the EU with Russia and Central Asia with various possible transit routes through Eastern and South-Eastern Europe, highlight different paradigms: of strategic cooperation and solidarity versus competition and differentiated risk exposure. There are now five major pipelines that come into play: the two main land routes from Russia transiting through Ukraine and Belarus, the Nord and South Stream projects that would avoid transit countries before reaching the EU, and the Nabucco/Southern Corridor being promoted by the EU. Of these a reconfiguration of the Ukrainian trunk pipeline, with a long-term concession leased to a tripartite (EU-RUS-UKR) consortium, could offer outstanding economic and political benefits. The Nabucco/Southern Corridor plans also open up tripartite (EU, Eastern Europe, Central Asia) cooperative possibilities, which could conceivably become quadripartite if Russia accepted the offer to join [1]. The strategic pipeline options are well identified: the actual Ukraine and Belarus transit routes, and the planned Nord Stream, South Stream, Nabucco and Southern Corridor projects. The transportation infrastructure, including international transit transmission systems for oil and gas, plays a vital role in the relationship of interdependence between all participants of the energy supply chain. It is well known that the European Union as the major consumer and Russia as the major supplier are extremely interdependent in terms of their energy policies. The existing and projected routes are, however, subject to a great deal of political and economic power play, which potentially undermines or endangers their efficiency. Along with the Russian-Ukrainian dispute during the winter months of 2006 and 2008, the

EU is becoming increasingly worried about the stability of oil and gas exports from Russia. There has been a growing concern that Russia is becoming an unreliable supplier or is using its dominant position to promote its political aims [5]. As a reaction, the EU has begun to eagerly promote the need for energy diversification aiming to improve the overall energy security level within the EU borders.

In this respect, the EU is rethinking its infrastructure policy with a global vision, including Russia, Central Asia and the Caucasus, and is linking this work to current energy forecasts. Under the new strategic energy review and the green paper for the Trans-European Energy Networks, a new pipeline strategy that links the Internal Market with third countries is defined. As part of its policy to enhance the EU's security of energy supplies, the Commission is promoting a diversification of gas and oil supply sources. To enhance the EU's energy security, it is important to diversify both the geographical sources of energy and the transportation routes.

The EU is seeking a balanced energy partnership with Russia and is pushing for the renewal of a wide-ranging Partnership and Cooperation Agreement, which includes energy relations as part of a broader trade arrangement. The Nord Stream pipeline, which will diversify transportation routes, has been labelled a project of European interest in the latest guidelines on TEN-E adopted in September 2006 by the Parliament and the Council [8]. High priority has also been given to the Yamal II project promoted by Poland, which would more than double the capacity of existing Yamal pipeline. The Amber project, which would pass onshore through the Baltic States to Poland rather than through Belarus, is a variation of Yamal II and is labelled as a project of common interest in the TEN-E guidelines [3]. The Nabucco project represents a new gas pipeline with a length of approximately 3,300 km connecting the Caspian region, the Middle East and Egypt via Turkey, Bulgaria, Romania, Hungary with Austria and further on with the Central and Western European gas markets [8]. The Commission takes the view that investment decisions, including optimal routing, whether underwater or on shore, have to be taken by the investors on the basis of their own commercial interests and judgments. Therefore the Commission does not express its preference for one project over the other in this context.

The following projects have begun service: Green Stream, connecting Libya and Italy through Sicily; Balgzand-Bacton between the Netherlands and the UK; The Turkey/Greece section of the Turkey-Greece-Italy pipeline (TGI) [6]. The following projects are under development: Transmed II, between Algeria, Tunisia and Italy, through Sicily; Medgas, connecting Algeria and Spain; The Greece-Italy section of the TGI Pipeline; Nord Stream, between Russia and Germany; Galsi, connecting Algeria to Italy via Sardinia with a branch to France via Corsica; Nabucco 2010 connecting the Caspian region, Middle East and Egypt via Turkey, Bulgaria, Romania, Hungary with Austria and further on with the Central and Western European gas marketsn [6].

These infrastructures will increase the import capacity by around 80 to 90 bcm, covering between 16 % and 17 % of the gas needs in 2010 [3]. New planned import points will strengthen imports to the South-Eastern region (especially Nabucco), to the Northern region (Nord Stream) and to the South-Western region (Galsi, Medgaz).

Ukraine is the largest transit state in Europe. This status predetermines its energy relations with the EU. Quarter of all gas consumed in the EU goes from Russia through Ukrainian GTS which includes more than 60,000 kilometers of pipe plus 71 compressed air plants and 13 underground gas storage facilities. Ukrainian underground storage capacity equals to 1/3 of EU storage and is intensely used to balance demand and supply of NG from Russia to EU in the peak periods [12]. We want to emphasize, that there is a great interconnection and interdependence between Russia, Ukraine and the EU in the triangle supplier – transit country-consumer. Among the main Ukraine's goals in its talks with Russia we'd like to stress at Ukrainian gain to ensure the «stability and predictability» of gas supply especially via Ukraine to Europe, and to consider options for modernizing the gas transit network [1]. Russia also heavily depends on Ukraine because 75 % of all Russian gas, exported to Europe goes through Ukrainian territory. Before the launch of North Stream this figure was about 80 %. After the launch of South Stream it is anticipated that this figure will be 20–25 %. The European Union is also interested in stable and predictable relations between Russia and Ukraine. By the way, Ukrainian transit tariffs are the lowest in Europe that may provide suitable energy resources prices for European consumers.

Out of the European part of the USSR, seven independent states emerged: Russia, Ukraine, Belarus, the three Baltic States, and Moldova. From then on, all new Russian projects went through transit States,

notably Ukraine, on which 90 % of Soviet gas exports depended in 1992, and Belarus. These show that the Ukrainian energy transit system was integrated into the single European energy market through its well developed infrastructure which provide not only cheap energy resources transmission but also ensure the stability of energy supplies. But at our current research we'd like to stress at some aspects concerning current Ukrainian energy transit system integration into the European market.

Further information is given in order to demonstrate and to analyze the main steps from the Ukrainian side to follow the EU demands and standards. It will also confirm that the collaboration between the EU and Ukraine in the energy transit sector is an important issue for both: on the one hand it is a key aspect to ensure the EU energy security, on the other hand – it is an important element that will improve Ukrainian transit potential and will help to save the status energy «bridge» for the EU.

In order to develop a cooperation, a Memorandum of Understanding on co-operation in the field of energy between the European Union and Ukraine was signed in January 2005 on the sidelines of the EU-Ukraine Summit, held in December 2005. The Memorandum established a joint approach, supporting the progressive integration of the Ukrainian energy market with that of the EU and consisted of road maps covering four specific areas [7]:

- Nuclear safety;
- the integration of electricity and gas markets;
- the Enhancement of the security of energy supplies and the transit of hydrocarbons;
- the improvement of the effectiveness, safety and environmental standards in the coal sector.

In order to implement the main tasks of the Memorandum such steps were made:

- the preliminary audit of the Ukrainian gas transit network has been completed in the framework of the EU's technical assistance, which has identified the need for substantial investments. the European Commission has been in discussions with the European Investment Bank, the European Bank for Reconstruction and Development and the World Bank to develop a concept for a financial mechanism to be open to Ukraine, the national financial agencies of the EU Member States and non-EU countries private sector financial bodies and other participants, to provide and oversee the financing which is needed to support the rehabilitation and modernisation of Ukraine's main gas transit infrastructure. The final report of the Audit of the Ukrainian gas transit system carried out under the Tacis Programme, which was submitted to the Ukrainian government in 2007, estimated the cost of the rehabilitation plan at € 2,5 billion over the period 2009–2015 [5];
- the inauguration of the Boyarka Gas Metrology Centre in December 2006, the final work is underway to make the centre fully operational. Discussions are also now ongoing to give the Centre a regional dimension and further work is expected to begin before the end of the year to extend the scope of the Centre's work to cover crude oil and oil products, as well as to offer training facilities.

Later the EU created the Energy Community Treaty [4], which provided for the EU acquis in the energy sector to be «exported» to the Western Balkan states through the adoption of EU legislation and norms. In practice, Ukraine moved decisively to cooperate with the EU over energy policy only following the Russian gas cut-offs – lasting three days in January 2006 and 19 days in January 2009. The EU and Ukraine opened negotiations over energy issues in 2008, after the Energy Community Treaty had entered into force in mid-2006, with a view towards Ukrainian membership.

In September 2010, Ukraine and the EU signed the Energy Community Treaty accession protocol, which entered into force in February 2011. Ukraine's accession to the Energy Community Treaty requires it to implement the EU's Third Energy Package, including «unbundling». It is envisaged in the Third Energy Packet that the energy supply and generation activities of energy companies should be 'unbundled' from their distribution networks to further increase market competition [10].

The third energy package introduces more strict rules, particularly around «unbundling» the supply business and network business. It suggests three options for the approach an EU member state can take. The first option is the most radical: it says that there should be no common ownership between the network and the supply business. This means that a supplier should not own the network. Some EU member states have opted for this solution. The second option is less radical: it provides for introducing an independent system operator. In this case, the network remains under the ownership of the previous owner, but that owner does not operate the network and does not decide on the rules of network access. Rather, the owner negotiates a kind of a lease agreement with another company to operate the network. Finally, the *third option* imposes

strict rules on the integrated company. It specifies clear requirements to ensure that the way the company operates the network is not aligned with its own supply interests. Interestingly, even in countries that chose the third option, such as Germany, many integrated companies decided to sell the network, believing it did not make sense to retain ownership since the network no longer gave them a competitive advantage. This suggests that the EU's «unbundling» rule is effective [14].

This means that Naftohaz Ukrainy, the Ukrainian party to the supply and pricing contracts with Gazprom, will cease to exist in its current form, requiring the renegotiation of gas import contracts with Russia within the new economic and legal environment. The unbundling of Naftohaz Ukrainy changes the calculations of transit economics for Gazprom and Russia. For instance, Gazprom would have to compete with alternative sources being developed by Ukraine (such as domestic production both onshore and offshore, shale gas, and liquefied natural gas imports) that will enable the latter to change its pricing formula. As a result, Russia and Gazprom have been seeking to diminish or eliminate their dependence upon Ukraine as a transit country. This, in turn, has been one of the reasons behind political momentum in Russia for construction of the Nord Stream and South Stream gas pipelines.

We want to stress, that primarily the arguments for Ukraine membership to the European Energy Community and its aspirations were very optimistic (to become a member on Feb. 1, 2010; more competition in the domestic market; higher technical standards and regulations; better investment climate; further integration of Ukrainian energy sector with the EU; enhance energy security; access to international loans and technical assistance). But in reality we have somewhat different situation: Ukraine expected blocking of the «South Stream» and investments in the GTS modernization; EU expected reforms of the internal market; Ukrainian government uses membership in the EEC to promote reforms that do not enhance competition but strengthen manual control; law on oil and gas sector reforming entitles the Cabinet of Ministers to unilaterally reorganize the energy sector [12]. Ukrainian officials accuse EEC that it does not fulfill obligation undertaken by the Treaty, establishing EEC. Now Russia successfully develops South Stream, building storage capacities in Serbia and Slovakia; Bulgaria nominated the South Stream as national priority project.

The opening a few years ago of the Nord Stream gas pipeline under the Baltic Sea from Russia directly to Germany and Europe threatens Ukraine's place as a transit country. It makes the country's GTS potentially less valuable economically, even though its capacity utilization has fallen significantly (under its projected carriage of 55 billion cubic meters per year, bcm/y) since the pipeline's second «string» opened late last year. Gazprom now repeats the same warning to Ukraine in speaking about the long-planned but still troubled South Stream pipeline (which has an projected capacity of up to 63 bcm/y) designed to go under the Black Sea from Russia to the Balkans.

At the same time, we have to emphasize that gas and oil infrastructures are thought of in the long-term – substantial investments become profitable only after many years -, the projects themselves often prove to be highly unpredictable and are affected by the geopolitical risks. And there are some linkages throughout Europe that have never been completed or have been in discussion for many years, even decades. So, in order to preserve Ukrainian place as one of the biggest transit state in Europe, Ukraine needs to make determined choices: to diversify sources of energy (LNG, coal); to provide deeper integration in the EU common energy market; to promote healthy investment climate and take advantage of competition in the energy sector; to form the consortium agreement that have to be accompanied by ship-or-pay contract.

As a **conclusion** we have to state that the EU's energy policy has several objectives, including the establishment of a truly integrated European energy market, enhancing energy efficiency, and mitigating risks by diversifying energy supply. The EU is rethinking its infrastructure policy with a global vision, including Russia, Central Asia and the Caucasus, and is linking this work to current energy forecasts. Ukraine is the largest transit state in Europe. This status predetermines it's energy relations with the EU. The gas transit system of Ukraine represents the backbone of gas supplies to Europe from Russia gas exports to the EU, and may become a new 'energy bridge' for energy resources transmission from the Caspian region.

Implementation of European norms and standards, internal reformation and accession to the European energy market can increase the importance of Ukraine in ensuring energy security of Europe. We consider, that energy sector is a sphere that will continue to be at the centre of EU-Ukraine relations and where cooperation will continue to grow substantially over the coming years. The collaboration between the EU and Ukraine in the energy transit sector began from signing the Memorandum of Understanding on co-

operation in the field of energy between the European Union and Ukraine, Energy Charter Treaty, Protocol on Transit and the successful implementation of declared norms and standards will positively effect the further Ukrainian transit infrastructure integration into the EU energy supply system. We believe that the development of such cooperation is an important issue for both: on the one hand it is a key aspect to ensure the EU energy security, on the other hand – it is an important element that will improve Ukrainian transit potential and will help to save the Ukrainian «energy bridge» status.

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Деделюк Катерина. Законодавчі аспекти інтеграції української енергетичної транзитної системи до інфраструктури Європейського Союзу. У статті представлено результати аналізу процесу інтеграції української транзитної інфраструктури з постачання нафти й газу до енергетичного ринку Європейського Союзу. Схарактеризовано систему постачання енергетичних ресурсів до ЄС і визначено місце України як країни-транзитера. Розкрито специфіку законодавчих аспектів інтеграції на основі документів, що визначають умови подальшого розвитку української транзитної системи відповідно до вимог європейських стандартів. Матеріали можуть бути використані в дослідженні тенденцій і напрямів розвитку енергетичного ринку ЄС, зокрема щодо питань співпраці з Україною як країною-транзитером для стабільної передачі нафти й газу та реалізації основних принципів енергетичної безпеки.

Ключові слова: транзит, інфраструктура, енергетичні ресурси, нафта, газ, трубопровід, країна-транзитер.

Деделюк Екатерина. Законодательные аспекты интеграции украинской энергетической транзитной системы к инфраструктуре Европейского Союза. В статье представлены результаты анализа процесса интеграции украинской транзитной инфраструктуры по поставкам нефти и газа в энергетический рынок Европейского Союза. Охарактеризована система поставки энергетических ресурсов в ЕС и определяется место Украины как страны-транзитера. Раскрыта специфика законодательных аспектов интеграции на основе доку-

ментов, определяющих условия дальнейшего развития украинской транзитной системы в соответствии с европейскими стандартами. Материалы могут быть использованы в исследовании тенденций и направлений развития энергетического рынка ЕС, в частности по вопросам сотрудничества с Украиной как страной-транзитером с целью стабильной передачи нефти и газа и реализации основных принципов энергетической безопасности.

Ключевые слова: транзит, инфраструктура, энергетические ресурсы, нефть, газ, трубопровод, страна-транзитер.

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Руستم Енверов

Концептуалізація двосторонньої стратегії українсько-турецьких економічних відносин в умовах поглиблення євроінтеграції

Зовнішньополітична стратегія України повинна чітко визначати позицію щодо ролі нашої країни в системі політичних відносин у європейському мегареґіоні, насамперед у євроінтеграційних процесах. У статті ґрунтовно проаналізовано сучасний стан євроінтеграційної політики України й Турецької Республіки, запропоновано авторський сценарій розвитку двосторонніх економічних відносин в умовах активізації співпраці з ЄС із наведенням практичних рекомендацій інтенсифікації цього процесу. Удосконалено теоретико-методичні засади, обґрунтовано прикладні рекомендації та засоби реалізації стратегічних пріоритетів українсько-турецьких економічних відносин у процесі євроінтеграції. Вважаємо, що необхідною й достатньою умовою стратегічного партнерства в українсько-турецьких відносинах доцільно розглядати просторово-структурну модель триангулярного партнерства «Україна – Турецька Республіка – ЄС».

Ключові слова: євроінтеграція, інституційна інфраструктура, стратегічне програмування розвитку відносин країн-партнерів.

Постановка наукової проблеми та її значення. Системна модернізація держави можлива за умови якісних змін на рівні її окремого структурного елемента. Зовнішньоекономічна складова частина політики країни належить до вагомих чинників впливу на конкурентоспроможність національної економіки та рівень її економічної безпеки в умовах глобальної конкуренції. Трансформація системи світового господарства й міжнародних економічних зв'язків у глобальну економіку набуває актуальності на посткризовому етапі розвитку. Стратегія зовнішньоекономічної політики України має відповідати сучасним викликам, бути здатною реагувати на зовнішні загрози, забезпечувати сталий розвиток економіки та добробут населення. Україна поки ще не сформувала власної геоекономічної та геополітичної стратегії, однак в умовах глобальної невизначеності позаблокова модель країни сприяє маргіналізації її економіки та «відчуженню» від світогосподарських зв'язків.

Геополітичний вектор стратегічного програмування вимагає модернізації форм і методів, часових та просторових орієнтирів двостороннього економічного співробітництва насамперед із сусідніми країнами, а, можливо, й стратегічними партнерами. Зокрема, для Турецької Республіки постає питання про подальшу стратегію розвитку, яке полягає у виборі між запровадженою ще М. К. Ататюрком політикою «вестернізації» та політикою відновлення ролі в ісламському світі [1, с. 22]. Питання про відносини між Турецькою Республікою і Євросоюзом І. Валерстайн називає однією з найбільш важливих на початку ХХІ ст., адже ця взаємодія, яка існує вже понад 60 років, символізує, на думку автора, відносини між християнським і мусульманським світом [2]. Турецька Республіка й Україна переживають «процес повномасштабного переосмислення своєї зовнішньої політики» [3, с. 17]. Але, критично оцінюючи двосторонні міжнародні відносини країн, можна стверджувати, що турецька економічна дипломатія видається ефективнішою через об'єктивні та суб'єктивні чинники диверсифікованої, паритетної зовнішньої політики з основними регіональними й глобальними акторами: ЄС, США, арабським, тюркськими (Казахстан, Туркменистан, Азербайджан, Киргизстан),