

## Filip Elżanowski – recipient of the CARS Regulatory Award 2017

### Energy security – from the volume editor

#### Articles

Adam Szafranski, **Legal Aspects of the Responsible Development Strategy in the energy field with special regard to Electro Mobility**

#### Table of contents:

- I. Responsible Development Strategy in the energy field The need of regulation in capacity market and Electro Mobility
- II. Legal barriers to the development of Electro Mobility
- III. Governmental proposals in the Draft Law on Electro Mobility
- IV. Summary

**Summary:** This article mentions the strategic projects of the Polish government in the energy field, presented in its Responsible Development Strategy. Two projects are considered, which are in particular in need of a new regulatory environment – the capacity market and Electro Mobility (E-Mobility). The paper's next focus is on identifying legal barriers to the development of Electro Mobility. The basic issues that need to be regulated include: the need to define the parties involved in charging an electric vehicle, clarification of energy law (concession requirement) and construction law (building permit requirement). The author analyses the planned provisions contained in the Draft Law on Electro Mobility and Alternative Fuels in the context of doubts that he raises. As a result of the analysis, the author comes to the conclusion that the draft law is coherent and focused on the future, but ignores existing infrastructure. Therefore the draft law tackles only part of the problems.

**Key words:** electro mobility; alternative fuels; energy law

**JEL Classification:** K 15, K 23, K32

Filip M. Elżanowski, Piotr Manteuffel, **Concession – a legal instrument for energy security**

#### Table of contents:

- I. Concession as a legal instrument – legal aspects
- II. Concession in the light of the Energy Law Act of 10 April 1997
- III. Concession procedure before the President of the Energy Regulatory Office
- IV. Objective of limiting/restricting/regulating? energy sector activities via a concession
- V. Energy security as the objective of concession for energy activities – current example
- VI. Summary

**Summary:** The article presents an attempt to evaluate concessions granted by the President of the Energy Regulatory Office as a legal instrument for energy security. The analysis carried out relates to particular statutory conditions for granting a concession to an undertaking which intends to commence a business activity on the energy market, and to the scope of the verification of the fulfilment of such conditions by the applicant conducted by the regulatory authority in the course

of the concession proceedings. Additionally, the amendment to the Energy Law Act of 22 of July 2016 is analysed, as a recent example of a legislative initiative aiming to strengthen energy security. The final part of the article concerns problems related to the correctness of certain interpretations of the new or amended provisions of the Energy Law Act being applied in practice, in the context of the primary objective of making business activity in the energy field subject to a concession.

**Key words:** license; energy security

**JEL Classification:** K20, K23, K32

Marcin Kraśniewski, **The stock ticket contract – chosen practical considerations**

**Table of contents:**

- I. Introduction
- II. Nature and form of the stock ticket contract
- III. Chosen elements of the stock ticket contract
  1. Personal scope of the stock ticket contract
  2. Material scope of the stock ticket contract
  3. Scope of control by the President of the Energy Regulatory Office over stock ticket contracts
  4. Storage location of mandatory natural gas stocks based on the stock ticket contract
  5. Liability of the parties to the stock ticket contract
- IV. Summary

**Summary:** The article is an attempt to describe a new method of fulfilling the obligation to maintain natural gas stocks – the stock ticket contract. It presents two amendments to the Act of 16 February 2007 on Stocks of Crude Oil, Petroleum Products and Natural Gas as well as the rules in the event of a threat to domestic fuel security or crude oil market disturbances. Furthermore, presented are also some reservations and consequences of the stock ticket contract, a legal institution established by these amendments and rules. The author discusses the material, personal and temporal scope, form and nature, scope of control held by the President of the Energy Regulatory Office, storage location of mandatory natural gas stocks based on the stock ticket contract, and the liability of its parties. The summary presents recommendations for improvements of the legal provisions related to the stock ticket contract.

**Key words:** stock ticket contract; natural gas; natural gas market; mandatory natural gas stocks; fuel security; President of the Energy Regulatory Office; obliged entity

**JEL Classification:** K23

Marta Urbańska-Arendt, **Impact of the ECHR on the inclusion of ‘guilt’ as a condition for the admissibility of fines for antitrust and energy law violations**

**Table of contents:**

- I. Introduction
- II. ‘Guilt’ as an element of a perpetrator’s attitude to his behaviour
- III. ‘Penal’ character of fines imposed in administrative proceedings
- IV. Elements of a perpetrator’s attitude to his own behaviour as the admissibility requirement for the imposition of fines in court rulings concerning violations of the Competition and Consumer Protection Act of 2007

V. Elements of a perpetrator's attitude to his own behaviour as the admissibility requirement for the imposition of fines in court rulings concerning violations of the Energy Law Act

VI. Summary

**Summary:** Standards of protection of human rights set out by the ECHR induce Polish courts to treat elements of a given perpetrator's attitude to his own behaviour as a condition for the imposition of fines for infringements of the Competition and Consumer Protection Act and the Energy Law Act. The paper examines case law from 2010 until now, in order to determine whether it has become consistent and permanent judiciary practice to take into account the standards of the ECHR and, consequently, the perpetrator's 'guilt' as the admissibility requirement for the imposition upon him of fines for antitrust and energy law violations. If such was the case, what arguments do courts put forward, bearing in mind that such a requirement is not set out by statutes.

**Key words:** European Convention of Human Rights; fines for antitrust and energy law delicts; antitrust law; energy law

**JEL Classification:** K21, K23

Przemysław Zdyb, **The imposition of administrative fines by the President of the Energy Regulatory Office in the context of the amendment of the Code of Administrative Procedure of 7 April 2017**

**Table of contents:**

- I. Introduction
- II. Legal nature of administrative fines
- III. General regulations on administrative fines in the Code of Administrative Procedure
- IV. Specific regulations on administrative fines in the Energy Law Act
- V. Summary

**Summary:** The article refers to the issue of imposing fines by way of an administrative decision of the President of Energy Regulatory Office for the failure to perform public law obligations provided for in the Energy Law Act of 10 April 1997. The first part of the paper outlines the legal nature of administrative fines. The next part presents new regulations on administrative fines added to Code of Administrative Procedure by the amendment from 7 April 2017. The paper then deals with specific regulations on administrative fines contained in the Energy Law Act. The article concludes with a summary containing postulates *de lege ferenda* on the reduction of the number of legal acts used by the President of the Energy Regulatory Office to impose administrative fines.

**Key words:** administrative fines; energy; regulation; obligations of energy companies

**JEL: Classification:** K23

Jarosław Sroczyński, **Consumer ADRs in the energy sector: hopes and questions**

**Table of contents:**

- I. Introduction
- II. Features of proceedings before the Negotiations Coordinator
- III. Duties of energy companies
- IV. Voluntary character of proceedings before the Negotiations Coordinator

V. Prohibition of the suspension of supplies of fuels and energy

VI. Summary

**Summary:** The article presents new legal solutions in relation to Alternative Dispute Resolution (ADR) in the energy sector. Discussed are key features of the proceedings before the negotiations Coordinator. Stressed are several significant doubts concerning the [new] procedural solutions, which may weaken the overall positive effect of the new regulation. These doubts pertain, above all, to the overly broad voluntary character of the proceedings before the Negotiations Coordinator, and the controversial prohibition of the suspension of the supply of fuels and energy until the dispute is resolved by the Negotiations Coordinator.

**Key words:** consumer arbitration; Coordinator of negotiations; energy supplier; consumer; OCCP; ERO

**JEL Classification:** K23, K41

Magdalena Porzeżyńska, **The impact of the proposed amendments to Directive 2009/28/EC on the promotion of the use of energy from renewable sources on energy security in Poland**

**Table of contents:**

- I. Introduction
- II. Key provisions of the Directive
- III. Review and assessment of the proposed amendments to the Directive from the perspective of the functioning of the Polish energy market
- IV. Summary

**Summary:** On 30 November 2016, the European Commission introduced the *Clean Energy for all Europeans* legislative proposals related to changing the European energy market. The purpose of those legislative acts, commonly known as the Winter package, is to set out the direction of the development of the European electricity market, as well as to predict legislative changes in the EU energy sector. Moreover, the Winter package includes also a proposal to amend Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, which is imperative for the Polish energy market. It should be noted that renewable sources of energy are considered to be crucial for the security of the national delivery of energy. The article aims to verify the above part of the proposed legislation on the grounds of Polish security of energy delivery.

**Key words:** Winter package; Directive 2009/28/EC; renewable energy sources; energy security; Polish energy sector

**JEL: Classification:** K23

### From student workshops

Wojciech Modzelewski, **Extrajudicial settlement of consumer disputes in the energy field**

**Tables of contents:**

- I. Introduction
- II. Resolving disputes by the President of the Energy Regulatory Office

- III. Negotiation Coordinator – procedural issue
- IV. Competences of the Negotiation Coordinator
- V. Extrajudicial settlement of consumer disputes in the French energy field
- VI. Conclusions

**Summary:** Polish regulations on consumer protection in the energy sector are still far behind other European countries where Alternative Dispute Resolution (ADR) is more popular. This article examines new regulations that aim to introduce ADR in the energy field. *The Consumer ADR Act introduced into the Polish legal system entity acting as a mediator in disputes between an energy company and consumers, in this area mediator replaced existing consumer court.*

**Key words:** extrajudicial settlement of consumer dispute; Negotiation Coordinator; energy law

**JEL Classification:** K32

### Mateusz Sokół, **Transmission corridors in the legislation of the United States of America**

#### **Table of contents:**

- I. Introduction
- II. Right of US transmission companies to use real estate
- III. Size of transmission corridors in the US
- IV. Transmission corridors in Poland
- V. Conclusions

**Summary:** The present article chooses as its subject a somewhat unpopular, at least in Polish literature, matter of transmission corridors in the United States of America, as one of the elements that are to ensure widely understood energy security. A transmission corridor is a normatively isolated terrain of a special legal status (with its existence sometimes manifested in a factual way), where transmission infrastructure are, or will be located, which plays specific roles that define the very essence of the corridor. The author begins with the deliberation on the issue of the right of transmission entrepreneurs to use the land (covered by the transmission infrastructure), presents the division between different types of transmission corridors and gives their detailed description as well as discusses their relations.

**Key words:** transmission corridor; USA; NIETC; transmission entrepreneurs; transmission

**JEL Classification:** K10, K11, K15, K32

#### **Book reviews**

**Ilona Przybojewska, *Znaczenie transeuropejskich sieci energetycznych dla zapewnienia bezpieczeństwa energetycznego [Importance of trans-European energy networks for energy security]* (Bartłomiej Nowak)**

#### **Reports**

***Bezpieczeństwo i regulacja na rynku energetycznym [Safety and regulation on the energy market]* Łódź, 24 maja 2017 (Marcin Kraśniewski, Wojciech Modzelewski, Mateusz Sokół)**