

Do we still need heating? (from the Editors-in-Chief)

CARS Climate and Energy Laboratory (the establishment of a new laboratory) (Michał Krzykowski)

ARTICLES

Marcin Kraśniewski, **Dilemmas of the heat sector – a few words about competition and monopoly in the district heating sector**

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- I. Instead of an introduction – what is economic regulation?
- II. District heating: what kind of sector is it in Poland?
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- V. The UOKiK President: is there a place for him in the district heat sector?
- VI. Conclusions

Summary: The dilemmas of the system heat sector boil down to the scope of the interference of the President of the Office of Competition and Consumer Protection (UOKiK President) and the President of the Energy Regulatory Office (URE President) in the functioning of heating companies. The article proposes a thesis which states that despite the liberalization measures in the district heating sector, the sector remains a natural monopoly. This results in the primacy of the URE President as the regulator of this sector and, at the same time, in the limited scope of influence of the UOKiK President as an antitrust authority. First, the article aims to define the very concept of ‘economic regulation’, the institutional element of which is the URE President. Second, it demonstrates the existence of a monopoly in the district heating sector in Poland. Third, it discusses the competencies of the URE President and the UOKiK President in the district heating sector.

Key words: district heating; sector; economic regulation; monopoly; competition; regulatory authority; antitrust authority

JEL classification: K12, K21, K32, K33

Marcin Ziarkowski, **Opportunities and directions in the transformation of district heating in Poland**

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- II. Current problems of district heating in Poland
 1. Introductory remarks
 2. Unfavourable shape of the fuel mix for heat production
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III. Opportunities and directions for district heating in Poland

1. Introductory remarks
2. Development of high-efficiency cogeneration based on existing aid instruments
3. Benefits of the use of district heating in large population centres
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IV. Conclusions

Summary: The Polish heating sector is currently in the initial phase of a switch to ecological and energy efficient heating. The challenges facing the Polish district heating sector are considerable, given its unprecedented size in the EU. The purpose of this article is to identify the most important problems of network heating in Poland, and to indicate opportunities and possible development directions for this sector.

Key words: district heating; energy efficiency of district heating systems; combined heat and power plants; high-efficiency cogeneration; fuel mix for heat production.

JEL classification: K20, K23, K32

Zdzisław Muras, **Simplified method of approving cogeneration tariffs – entitlement or obligation?**

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- II. The ‘cost’ method and the simplified method – statutory solutions
- III. The simplified method and the ‘cost’ method – answers included in the regulation
- IV. Simplified method and the ‘cost’ method – *de lege lata*
- V. The simplified method and the possibility of changing the tariff during its validity
- VI. *De lege ferenda* conclusions

Summary: The aim of this study is to present the doubts that arise during the application of the law regarding the scope of the usage of the so-called simplified method of approving heat tariffs for cogeneration units in practice. This contribution covers both the provisions of the Energy Law Act and the regulation on the detailed rules of shaping and calculating tariffs and settlements for heat supply. The author, after reviewing a broad scope of literature and jurisprudence, made an attempt to develop a clear common approach to the outlined issue. Providing an unambiguous answer to the question stated in the title, considering the ambiguity of legal regulations, is an important practical problem for the functioning of energy companies. This problem results in far-reaching economic implications for business activities in the heat market. The issue of the possibility of changing the approved tariff during its validity period by using the simplified method is also the subject of the study presented in this article.

Key words: tariff; cogeneration; simplified method of tariff approval; tariff changes.

JEL classification: K

Michał Baldowski, Michał Maruszak, **New support scheme for energy produced from high-performance cogeneration – selected legal aspects**

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- I. Introduction
- II. New support mechanism for cogeneration
- III. Rules governing participation in a support scheme
 1. Auction system and quasi-auction system
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- IV. Premium for cogeneration v. return of a negative balance for RES installations
- V. Summary

Summary: At the end of 2018, the Sejm (Poland's Lower House of Parliament) adopted legislation aimed at the comprehensive regulation of cogeneration, that is, the simultaneous generation of electricity and heat. This legislative solution was dictated by the necessity to popularize a method of energy generation that is highly efficient and results in a relatively low level of environmental harm. In the opinion of the authors, the new legislation should be evaluated positively given that, since the system is competition-based, energy targets can be met at the lowest possible cost to the state budget. At the same time, small and already existing power generation units are protected thanks to the guaranteed aid. However, the aim of this article is also to point out the disadvantages of this system, including the unjustified investigation of the incentive effect and different treatment of energy producers using cogeneration and renewable sources.

Key words: cogeneration; state aid; support scheme; energy law; auction system; guaranteed premium; investment decision.

JEL classification: K23, K32, K33

Paweł K. Domagała, **Acquiring a new customer by an energy seller**

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- I. Introduction
- II. Acquiring data of a potential customer
- III. Transmission of contract offers
- IV. Conclusion of an energy sales contract
- V. Summary

Summary: Since the application of the General Data Protection Regulation, awareness of the obligations relating to the collection and use of personal data has increased significantly. This study will present the process of obtaining a new customer by an electricity seller in Poland, as well as how Polish laws and the GDPR affect the implementation of this process and what restrictions must be faced by electricity sellers. This process will be presented in three stages: obtaining the data of the potential customer, forwarding the offer to conclude a contract for the sale of electricity, and concluding such a contract. The most important obligations imposed on electricity sellers as part of the process of acquiring new customers will also be indicated. In addition, an attempt will be made to determine the impact of the currently drafted regulations on the shape of the electricity sales process in the future.

Key words: energy sector; electricity sales; customer acquisition; marketing; GDPR.

JEL classification: K12, K21, K32, K33.

CASE LAW REVIEWS

Karolina Wcisło-Karczewska, Jan Sakławski, **The impact of the coronavirus pandemic on legal regulations in the energy sector**

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- I. Introduction
- II. Anti-crisis shields
 1. Ban on suspension of delivery of energy, gas or heat to end consumers due to payment failure
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- III. EU Funds supporting the energy industry
 1. Just Transition Fund
 2. InvestEU and other programs for economical restoration
- IV. Summary

Summary: This text aims to introduce the reader to the newly implemented legal solutions for the energy sector that have appeared in connection with the introduction of the so-called anti-crisis shields. The study is primarily descriptive due to the fact that these regulations are yet to have any relevant jurisprudence. Finally, general comments are included on the current EU legislation on programmes to help the energy sector recover from the crisis.

Key words: anti-crisis shield; SARS-CoV-2; pandemic; security of energy supply; investments; Just Transition Fund; InvestEU.

JEL classification: K23

Jakub Faszczka, **Development of the principle of energy solidarity in the jurisprudence of the Court of Justice**

Table of contents:

- I. Introduction
- II. The principle of energy solidarity in the context of the ENI case
- III. The principle of energy solidarity in the context of the OPAL case
- IV. Summary

Summary: The author aims to present, based on the available jurisprudence, the development of the principle of energy solidarity expressed in Article 194 TFEU. This principle was introduced into EU Primary Law with the entry into force of the Treaty of Lisbon over a decade ago. During this period, EU courts rarely referred to this principle. Therefore, the case-law relating to it should be regarded as not comprehensive.

Given the above, the author in this article analyzes two judgments based on which the principle of energy solidarity was raised. First, the CJEU judgment of 20 December 2017 in the case of *Eni SpA, Eni Gas & Power France SA, Uprigaz p. Premier minister, Ministre de l'Environnement, de l'Energie et de la Mer*, sign. C-226/16, where the Opinion of Advocate General P. Mengozzie is of

key importance. Secondly, he analyzes the CJEU judgment of 20 September 2019 in the OPAL case, the Republic of Poland v. the Commission, sign. T-883/16.

The analysis of both above-mentioned cases raises the conclusion that this is only the initial stage of the development of the principle of energy solidarity. There are still many unknowns that might be subject to further rulings. Having that in mind, the author indicates in the summary, that there are cases currently pending before the CJEU which might be important for the further development of the principle of energy solidarity. Unfortunately at this stage, a detailed analysis is not yet possible, since no final rulings have been issued.

Key words: Energy solidarity; art. 194 TFEU; OPAL.

JEL classification: K32

BOOK REVIEWS

Eryk Kosiński, *Regulation of the energy sector in the European Union and Ukraine. The objectives and legal measures of the energy sector-specific regulation*, Wydawnictwo Naukowe UAM, Poznan 2019, pp. 878 (Miroslaw Pawelczyk)

Magdalena Porzeżyńska, *State aid for the production of energy from renewable sources in European Union law*, C.H. Beck, Warsaw 2020, pp. 276 (Marzena Czarnecka)

Tina Hunter, Ignacio Herrera, Penelope Crossley, Gloria Alvarez, (ed.), *Routledge Handbook of Energy Law*, Routledge, New York 2020, pp. 626 (Marcin Kraśniewski)

Contents, Summaries and Key words