ARTICLES

Mariusz J. Golecki, *In Search of the Optimal Lawmaker. Some Dilemmas of Regulation and Deregulation from the Perspective of Law and Economics*

**Table of contents:**
1. Instead of introduction
2. Within the thicket of theories of regulation
3. In search of the optimal lawmaker – neo-institutional theory of optimal regulation
4. Instead of conclusions

**Summary:** This paper presents various concepts of regulation, presented within the broad stream of neo-institutional economics. The purpose of the article is to attempt to answer the question why and how contemporary regulatory theory can and should take into account the characteristics of institutions involved in the process of law-making and applying the law. Such an analysis may constitute a starting point to outline of an integral model of regulation and deregulation, taking into account the complementary nature of legislative, executive and judicial powers

**Key words:** theory of regulation, externality costs, transaction costs.

**JEL:** K20, K23, L51

Rafał Dzikowski, Władysław Mielczarski, *Improvement of supply security by regional energy systems*

**Table of contents:**
1. Introduction
2. Security of energy supply
3. Balancing production and demand
4. Main functions of regional energy systems
5. Black-outs and possible measures
6. Local balancing areas
7. Autonomic energy regions
8. Social functions of energy
9. Operation of regional energy systems
10. Summary

**Summary:** The power supply systems used to operate as centralized systems where large power stations supplied electric energy via high voltage transmission networks and middle voltage distribution grids to final energy users. Emerging of new technologies, in particular, renewable energy plants, and the activation of energy customers, who are able not only to shape their power...
profiles but also to produce electricity, have radically changed the *modus operandi* of power supply systems, allowing for the improvement of power supply security. The paper is focused on presenting existing power systems pointing out the new rules of power system operation that have to come into play in the nearest future.

**Key words:** energy security, distributed energy, local power balancing, prosumers, energy clusters.

**JEL:** K230, Q420, Q280

Zdzisław Muras, *‘Service’ on infrastructural markets of fuel and energy in the light of the freedom of establishment and the freedom to provide services*

**Table of contents:**
I. Introduction
II. The scope of European regulations
III. National legal framework
IV. The essence of energy infrastructure markets
V. ‘Service’ in the context of general economic interest
VI. Conclusions

**Summary:** The aim of this paper is to provide an insight into doubts arising in the practice of applying the law related to the scope of the concept of ‘service’ in energy infrastructure markets with regard to European and national regulations. The concept of services in the context of the general economic interest was also considered. The author, having conducted a broad query on the subject literature and case law, attempted to develop the most explicit approach to the outlined study subject. Proper classification of a given activity as a service or business activity is not only of a theoretical nature. Indeed it has far-reaching economic implications for the performance of a given activity, especially in the context of European legislation and case-law.

**Key words:** service, business activity, service in the context of general economic interest.

**JEL:** K20, K23

Paweł Hawranek, Dariusz Michalski, Daniel Borkowski, *Impact of the MiFID II Directive on the risk of operation of energy sector companies in Poland*

**Table of contents:**
I. Introduction
II. Potential impact of the MiFID II Directive on the operational activity of Polish energy companies
III. Investment activity under MiFID II
IV. Exceptions from the MiFID II regime that may be used by enterprises operating on the wholesale energy market
V. Regulatory risk under MiFID II
VI. MiFID II compliance risk analysis for Polish energy companies
VII. Final remarks

**Summary:** The introduction of the MiFID II Directive required the implementation of this EU act into the Polish legal order, taking into account some of its specifics. However, the Directive was not implemented before of transposition date. Lack of implementation caused the occurrence of regulatory risk on the side of energy companies involved in the wholesale market, related to the
lack of certainty as to the final shape of the implementation. The time of the *vacatio legis* of the directive, instead of adapting the structure of enterprises, was used to wait for the introduction of implementing regulations. As a result, energy companies received very little time to adapt their structures to the new regulatory requirements. At the same time, they were obliged to conduct their activities based on the unchanged provisions of the PL Financial Instruments Act, with full awareness of the inevitable introduction of significant changes, including the imposition of regulatory duties, with a short date of their entry into force. All of the above meant that conscious energy companies, until the full development of the post-MiFID order and good practice, and especially the regulator’s approach to the new requirements, took a number of steps to prepare for the application of the new regulation.

**Key words:** forward; futures; MIFID II; energy trading; wholesale market; compliance risk of contracts equivalent.

**JEL:** G140, L510

Jarosław Sroczyński, Agnieszka Staszek, *Network connection agreements in the heating sector: competition and consumer law issues*

**Table of contents:**

I. Introduction
II. Conclusion of a connection agreement based on Art. 7 Sec. 1 of the Energy Law
III. Contract for the connection to the heating network in the absence of economic conditions for such connection
IV. Problems with the performance of a concluded contract under the originally agreed conditions
V. Dominant position and potential risk of its abuse
VI. Transformations on the side of the connected entity and the related risk of violation of collective consumer interests
VII. Summary.

**Summary:** The article presents the issue of concluding contracts for the connection to the heating network from the perspective of competition and consumer protection law. The obligations of heating enterprises were discussed, primarily the obligation to connect new customers to the heating network. The key issue presented in the article is risk distribution between the heating company and the connected entity, if the original intentions of the investor, in particular the developer, prove to be impracticable. Excessive protection of the heating enterprise against such a circumstance may result in an allegation of abuse of a dominant position; an attempt to transfer the risks to consumers might cause an allegation of a violation of collective consumer interests. On the other hand, it is difficult to expect a heating company to take over the entire investment risk associated with new connections. The right balance between conflicting interests of the parties should be shaped by developing the case law of competition and consumer protection authorities.

**Key words:** network connection agreement, heating sector, investment risk, consumer, President of the Office of Competition and Consumer Protection, OCCP.

**JEL:** K21
Marcin Kraśniewski, *Application for certification of a capacity market entity for the main auction and additional auctions*

**Table of contents:**

I. Introductory remarks  
II. Personal scope of the application  
III. Substantive scope of the application  
   1. Legal basis  
   2. Individual elements (content of the application)  
      a) Identification information  
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      d) Environmental information  
      e) Representations  
      f) Additional information  
IV. Independent expert report  
V. Formal shortcomings of the application  
VI. Legal consequences of submitting the application  
VII. Final remarks  

**Summary:** The subject matter of this paper is the application for certification of a capacity market entity for the main auction and additional auctions referred to in the Act on the capacity market. First of all, the personal scope of the application is discussed. Presented next is the substantive scope of the application. This part includes an analysis of the legal nature of the Capacity Market Regulations, and their position in the hierarchy of legal acts, as well as a presentation of individual elements of the application for certification (content). Furthermore, particular attention is paid to the issue of an independent expert report, which is required for the application, and the criteria regarding the expert’s independence. The final part of the paper deals with the procedure of correcting the formal shortcomings and legal effects of submitting the application for an energy enterprise. The paper ends with final remarks, which summarise earlier deliberations and answer the aforementioned questions.  

**Key words:** capacity market, capacity market entity, application for certification, capacity supplier, main auction, additional auction.  

**JEL:** K23, K32, K33

Jarosław Greser, *Obligations of electricity and gas distribution system operators with respect to the development of public road transport recharging infrastructure*

**Table of contents:**

I. Introduction  
II. Localization plan of publicly accessible recharging stations and natural gas stations  
III. Localization plan of liquefied natural gas (LNG) bunkering points and shore-side electricity supply points for vessels  
IV. Natural gas stations’ construction programme  
V. Construction plan of publicly accessible recharging stations
Summary: The article regards the issue of the construction of an infrastructure indispensable for increasing the number of vehicles using alternative fuels. Pursuant to the lawmaker’s decision, the key role in the fulfillment of this duty will be played by electricity and gas distribution system operators, who will be responsible for the construction of the number of points indicated in the bill. Simultaneously, the localization of these points will be decided by other entities, such as municipalities, the General Director for National Roads and Motorways or harbor administrators. The obligations of DSO with respect to the preparation of plans and programmes for the constructions of stations and charging points in all cases envisaged in the Electro-mobility and Alternative Fuels Act are discussed in the article.

Key words: electro-mobility, DSO, recharging infrastructure, gas stations, CNG, LNG.

JEL: K20, K32

Marcin Trupkiewicz, The new support instruments of electricity generation based on a fixed purchase price-selected issues

Table of contents:
I. Introduction
II. Subject and scope of support instruments based on a fixed purchase price
III. The essence of support instruments based on a fixed purchase price
IV. Accession rules, duration and amount of support instruments based on a fixed purchase price
V. Proposed changes in the scope of instruments based on a fixed purchase price
VI. Summary – advantages and disadvantages of support instruments based on a fixed purchase price

Summary: The legal analysis conducted in this article of Polish provisions under the Renewable Energy Sources Act makes it possible to indicate that the legislator predicted the new instruments of support the RES. These instruments are addressed only to entrepreneurs who produce electricity from certain types of RES (agricultural biogas, landfill biogas, biogas from sewage treatment plants, other biogas and hydropower). The essence of these instruments is to base them on the use of a fixed purchase price, which creates two independent and separate mechanisms enabling the transfer of public aid for the production of electricity from RES. The first one is based on using a fixed purchase price as a guaranteed rate (feed-in tariff), which is paid directly by the obligated seller on the basis of an appropriate contract for the sale of electricity generated from RES installations. This agreement in the package also includes commercial balancing of electricity and related costs. The second instrument assumes the sale of energy on the market and additional compensation for the entrepreneurs, which are calculated by the difference between medium market prices of electricity and the level of a fixed purchase price. This compensation is paid in the form of the right to cover the negative balance. In this context, the level of the fixed purchase price is the basis for the calculation of the guaranteed premium to the market price of electricity (feed-in premium), which is transferred to entrepreneurs as support for the production of electricity from RES. The applicability of these instruments are preceded by appropriate proceedings before the National Regulatory Authorities and may also be limited by appropriate executive regulations issued by the Council of Ministers, which are pursuing the RES policy of the state, which became
fundamentally responsible for the realization of objectives of the EU climatic-energy policy which legally binds Poland.

**Key words:** renewable energy sources, RES support system, feed-in tariff.

**JEL:** K230, Q420, Q280

Michał Baldowski, *The Control of Certain Investment Act as a mechanism ensuring energy safety*

**Table of contents:**

I. Introduction  
II. Energy safety and the Act on Control  
III. Basis mechanisms under the Act on Control  
   1. Subject of the Act on Control  
   2. *Ex-ante* notification  
   3. *Ex-post* notification  
   4. Initiation and nature of administrative proceedings regarding the decisions issued under the Act on Control  
   5. Objection  
   6. Decision asserting the rights attached to shares held in a protected entity to be impermissible  
   7. Decision imposing a mandatory sale of shares held in a protected entity  
IV. Summary

**Summary:** In 2015 the Polish Parliament enacted the Control of Certain Investment Act (the Act), which introduces a special legal regime regulating the acquisition of shares, enterprise or organized parts of an enterprise, of businesses entered on the list of protected companies. The main goal of this regulation is to introduce administrative law mechanisms which protect companies of a strategic importance to national safety against hostile takeovers conducted by foreign entities. In the current legislative status, half of the protected companies pursuant to the Act are companies operating in the energy sector or closely related sectors. Therefore, the supervision over the trading in *inter alia* shares of such companies, conducted by the minister competent in the matters of energy, constitutes a material element aiming to guarantee the protection of broadly defined energy safety. However, the Act in the current state is imprecise and gives to the minister competent in the matters of energy a very broad level of interpretational margin through instruments, which in practice, allow the minister to oppose any transaction resulting in the acquisition of a material interest or a dominant position in energy companies protected under the Act. Furthermore, an analysis of the most important instruments regulated under the Act, such as *ex ante* and *ex post* notifications, as well as administrative decisions regulated under the Act, indicates numerous interpretational problems occurring under this regulation. In particular, key material doubts concern the application of the rules on a silent disposal of a case to proceedings regulated under the Act, the legal nature of the administrative decision issued under the Act, as well as selected issues regarding *ex ante* and *ex post* notifications. Taking into consideration the importance of the Act for national energy safety, and the implications of the Act with regard to energy law, the Act in the current state should be judged negatively.
Key words: control of investments, energy safety, notification, objection.
JEL: K23, K32

Paweł K. Domagała, GDPR and the process of changing the electricity seller and irregularities associated with it

Table of contents:
I. Introduction
II. Liberalization of the energy market
III. The procedure of changing the electricity seller
IV. Incorrectness of changing the electricity seller
V. Basic terms in the context of GDPR
VI. Principles relating to processing of personal data in the context of GDPR
VII. Summary

Summary: The subject of the study presents the procedure of changing the electricity seller in Poland. Since 2007, permanent increases in the number of changes of electricity sellers have been observed. The abovementioned is both an opportunity and a threat for consumers. Therefore, this study will describe the practices of electricity sellers, which breach collective interests of consumers. The second part of the study presents solutions contained in the General Data Protection Regulation (GDPR) in the context of the conclusion and performance of the contract for the sale of electricity. The way in which EU regulation can contribute to the increase of the security level of energy recipients will be covered next. In summary, it will be indicated what issue is posing the greatest threat in the case of a change of the electricity seller, as well as what action might be taken in order to limit it.

Key words: energy law; energy sector; change of the electricity seller; electricity sales; consumer; personal data, GDPR.
JEL: K12, K21, K23, K32, K33

LEGISLATION AND CASE LAW REVIEW

Ignacio Herrera-Anchustegui, Marcin Kraśniewski, Exemption from the Utilities Directive – brief overview of EU law and case law

Table of contents:
I. Instead of introduction – obligation to use and exemption from public contracts
II. Material basis of an exemption from the Utilities Directive
III. The European Commission’s decision-making practice regarding the granting of exemptions from the Utilities Directive in the energy sector.
IV. Conclusions

Summary: This paper presents the existing practice regarding the granting of exemptions from Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on

1 This paper was prepared based on a speech by dr. Ignacio Herrera-Anchustegui, delivered during the International Academic Conference ‘Security and Regulation of the Energy Market’ (Łódź 23–24.05.2019). The speech was prepared under the programme ‘Regulating energy markets, a perspective from EEA/EU Competition and Public Procurement Law’ financed by the University of Bergen and Equinor ASA.
procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC in relation to entities from the energy sector. In that regard, there is a noticeable growth in the number of positive decisions of the Commission. The authors anticipate that over time individual exemptions from the Utilities Directive will lead to the exemption of the entire energy sector or its significant part from the EU’s public procurement rules. The paper analyses the legal basis of exemptions granted and related decisions of the European Commission for entities that act in the energy sector.

**Key words:** procurement, energy, exposure to competition, utilities.

**JEL:** K23, K32, K33

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**FROM STUDENT WORKSHOPS**

Wiktoria Pogorzała, Michał Pytkowski, *Decision to suspend the use of a large combustion plant – weighing of public and private interest*

**Table of contents:**
I. Introduction
II. Suspension of installation use – general comments
III. Integrated permit
IV. Limitation of ownership by suspending the use of an installation
V. Restriction of the freedom of economic activity by suspending the use of an installation
VI. Summary

**Summary:** The purpose of the article is to analyze to what extent and whose interest should the environmental protection inspection body be guided by when deciding to suspend the use of a large combustion plant installation. Only proceedings based on Article 367 EPL, due to the fact that the optional nature of this proceeding, combined with the possibility of setting an additional deadline to remove violations only at the request of a party, raises doubts of the authors of this article regarding the weighing of public and private interests. In the analyzed proceedings, the public interest manifested in the obligation to protect the environment included in Article 5 and 74 of the Polish Constitution is opposed to private interests, expressed mainly in Article 20–22 and 31 of the Polish Constitution, namely the principles of private ownership and freedom of economic activity. The environmental protection inspection body must always make a thorough analysis by applying the facts of the case to the guidelines contained in the abovementioned articles of the Polish Constitution, which pull the decision in opposite directions. The authors of this article indicate that, in particular in the case of large combustion plants, the interest of the users of these installations suffers unjustified damage manifested in the specificity of the procedure for the proceeding to suspend the use of installations based on Article 367 EPL.

**Key words:** Suspension of installation use, public interest, private interest, environmental protection, integrated permit, a call to remove violations.

**JEL:** K23, K32
Mateusz Czuba, Michał Wielec, **Imposing taxes on wind farms**

**Table of contents:**
I. Introduction  
II. Imposing the excise tax on energy from wind farms  
III. Imposing the excise tax on energy from micro-installation in the opus system  
IV. Imposing the property tax on wind farms  

**Summary:** The main goal of the paper is to show all of the tax duties connected with the production of energy from wind in Poland. Producing electricity from wind is one of the most popular ways to produce energy from renewable sources of energy in Poland. Tax law linked to this kind of energy manufacturing is elaborate and still changing. The article is an attempt to describe all tax duties which are imposed on wind farm owners. The paper concentrates mainly on three of the most often appearing taxes: the excise tax, the property tax, and electricity taxation from micro-installation.  
**Key words:** renewable energy, taxes.  
**JEL:** K34

Maciej Groblewski, Michał Pater, **Legal status of electric scooters and their users – proposed solutions and models abroad**

**Table of contents:**
I. Introduction  
II. Aspects of the development of the electric scooter market  
   1. The social aspect  
   2. Technological aspect  
   3. The ecological aspect  
   4. Insurance aspect  
III. National proposal of the electric scooters market regulation  
IV. Foreign regulations of the electric scooter market  
V. Summary  

**Summary:** The growing popularity of electric scooters and other personal means of transport, as well as their progressive and massive impact, means that the law must regulate the condition of electric scooters, their users, rules of use and safety problems. This issue has not yet been regulated in Polish law. Social and technological requirements as well as the increasing scale of investment in electromobility have contributed to legislative action. In pursuit of the expectations of modern business trading and social behavior, the Ministry of Infrastructure has developed a draft act of 30 July 2019 amending the act on road traffic as well as the act on electromobility and alternative fuels, whose main objectives are to regulate the use of electric scooters. This publication conducts an analysis and evaluation of solutions proposed in the draft provisions in terms of obtaining answers to such questions as: Has the status of scooter use been determined adequately to the needs of business transactions? Have the scooter rights and obligations been correctly defined? What is the status of an electric scooter? Are the proposed solutions in line with trends appearing in the legislation of other countries? What regulatory model should the Polish legislator adopt? Does the draft act contain any loopholes? In this paper, the authors present the
reasons that led to the need to undertake legislative work and how might the legislator prevent the recurrence of these problems in the future.

**Key words:** electric scooters, electromobility, road traffic act, personal transport equipment.

**JEL:** K34

**REPORTS**

Security and regulation of the energy market – The International Academic Conference, Łódź, 23–34.05.2019 (Maciej Groblewski, Michał Pater, Wiktoria Pogorzała, Michał Pytkowski, Michał Wielec)