

LEGAL PROBLEMS OF IMPLEMENTING THE PUBLIC SERVICE OBLIGATION TO PROTECT GENERAL SOCIAL INTERESTS IN THE PROCESS OF FUNCTIONING THE ELECTRICITY MARKET ON COMPETITION

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Abstract. The article considers the current issues of the impact of regulatory measures of the state on competition in the electricity market of Ukraine. The scientific work was prepared according to the fundamental research topic «Theoretical and legal foundations of innovative development of the energy system» (state registration number: 0124U005149). The main aspects of the legal regulation of the public service obligation (PSO) to ensure general public interests in the process of functioning of the electricity market in Ukraine are identified. The regulation of the issue of imposing a public service obligation in this area in the EU, as well as reservations regarding the application of such a mechanism, has been studied. The advantages and positive impact of the mechanism of imposing a public service obligation are analyzed, its main disadvantages are substantiated. It has been established that the most common PSO functioning is the “PSO for households”. It’s substantiated that the imposition of the public service obligation by the state on electricity market participants has a significant impact on competition, and the establishment of regulated prices for electricity for the population is a fundamentally distortive measure for competition.

Keywords: electricity, electricity market, competition, the public service obligation (PSO), regulation.

Author Contributions

The author performed the work independently.

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The author have no competing financial, professional, or personal interests from other parties.

INTRODUCTION

During the period of post-war reconstruction of Ukraine, the issue of ensuring competition in the electricity market of Ukraine remains quite significant, even in the circumstances of the destruction of part of the electricity infrastructure.

The regulatory role of the state plays an important role in the functioning of the electricity market. The instrument of imposing the public service obligation (PSO) is quite significant in terms of the functioning of the electricity market. At the same time, the effective application of such a mechanism by the state requires clear regulatory and legal regulation, taking into account modern challenges in the conditions of martial law and post-war reconstruction of Ukraine, as well as the provisions of European Union legislation in terms of ensuring competition in the electricity market.

THEORETICAL REVIEW

General legal issues of the development and functioning of the Ukrainian electricity market, including in the aspect of European integration processes, have been studied by many scientists.

Scientists S. Hlibko, A. Chupryna, I. Podrez-Riapolova studied the problems of sustainable innovative development of the energy system and the role of investment funds in stimulating investments in energy-efficient, renewable, and innovative technologies (Hlibko, S., Chupryna, A., & Podrez-Riapolova, I., 2025).

Some scientific works have studied some economic aspects of the issue of imposing the public service obligation on electricity market participants. For example, the work of O.V. Ovsienko focuses on business issues in the field of energy supply in the Ukrainian energy market under conditions of uncertainty and considers the PSO mechanism as a tool for resolving a conflict that consists in the sale of the relevant product by suppliers at a price that is lower than the market price (Ovsienko, O. V., 2023).

D.K. Tkach considered the directions of reforming the electricity market, which began in July 2029, the main aspects of introducing the mechanism of imposing PSO, and the challenges associated with the said reform (Tkach, D. K., 2021).

S.V. Stepanenko, Y.V. Ovsichenko, N.I. Tokhtamysh considered the prospects for the development of the Ukrainian electricity market in the context of European integration, including the issue of imposing the public service obligation on certain market participants to ensure public interests (Stepanenko, S. V., Ovsichenko, Y. V., & Tokhtamysh, N. I., 2023)

However, there are still a number of issues that require further development, in particular, research into the impact of a regulatory measure in the form of a mechanism for imposing the public service obligation to ensure general public interests in the functioning of the electricity market on competition.

METHODOLOGY

A comprehensive approach to the study of the problem was used, using general scientific and special research methods. The monographic method was used to analyze the scientific literature. The study of the situation on the Ukrainian electricity market was conducted using comparative analysis. System-structural, abstract-logical, formal-legal, and other methods were also applied.

RESULTS

There is a practice, particularly in the context of European Union legislation, according to which, to protect the general public interest, public service obligations may be established (The Public Service Obligation, 2024). The state's application of this mechanism aims to compensate for the negative consequences of the introduction of new market rules in the industry, protect and support the most vulnerable segments of the population, etc.

In the field of the energy market of Ukraine, the term PSO is used with the corresponding wording – “imposition of public service obligations to ensure general public interests in the process of functioning of the electricity market”, which is introduced by the Law of Ukraine “On the Electricity Market” [Law of Ukraine, 2017]. At the same time, the most common PSO in the electricity sector in Ukraine is the «PSO for the population», which provides, among other things, for electricity prices fixed by the state for household consumers.

Thus, imposing public service obligations on electricity market participants is an effective mechanism for solving social problems of vulnerable segments of the population, including in wartime.

At the same time, public service obligations for market participants, which are established by the state to ensure public interests, by their very nature have an impact on the free market in the relevant

sector, consumer choice, the formation of competitive prices, etc., and as a result, on competition. That is, the specified instrument is a kind of state intervention in economic processes, as well as the adjustment of relevant economic processes, which, of course, requires research and attention from the state.

DISCUSSION

Article 62 of the Law of Ukraine “On the Electricity Market” [Law of Ukraine, 2017] provides that in order to ensure the general economic interest in the electricity industry of Ukraine, necessary to meet the interests of citizens, society and the state, and to ensure sustainable long-term development of the electricity industry and the competitiveness of the national economy of Ukraine, market participants may be imposed the public service obligations to ensure general public interests in the process of functioning of the electricity market.

At the same time, in the sphere of the specified legal relations, the Cabinet of Ministers of Ukraine, by Resolution No. 483 of June 5, 2019, approved the Regulation on the imposition of public service obligations on electricity market participants to ensure general public interests in the process of functioning of the electricity market [Resolution of the Cabinet of Ministers of Ukraine, 2019]. The specified Regulation, in particular, provides for the “PSO for the population”. In particular, it defines the general public interest, to ensure which special obligations are imposed on market participants, the content and scope of special obligations imposed on electricity market participants, categories of consumers to whom special obligations apply, etc.

The possibility of introducing PSO for households is also provided for by European Union legislation, namely Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (hereinafter referred to as Directive 2019/944). According to the said Directive 2019/944, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, as well as environmental protection, including energy efficiency, energy from renewable sources and climate protection.

It is fair to note that special obligations for market participants, which are established by the state to ensure general public interests, by their very nature, have an impact on the free market in the relevant sector, consumer choice, competitive price formation, etc.

In particular, paragraph 22 of the preamble to Directive 2019/944 states that public service obligations in the form of setting prices for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, limited consumer choice, worse incentives to invest in energy saving and energy efficiency, lower service standards, lower levels of consumer engagement and satisfaction and restricted competition, as well as fewer innovative products and services on the market. This does not correspond to the current global trend, according to which the main direction of reforming the global electricity industry is the development of competition in the field of electricity production by eliminating natural monopoly structures (Perevozova, I. V., Dalyak, N. A., Morozova, O. S., Lozinska, L. D., & Kulyk, T. P., 2022). The functioning of the electricity market on a competitive basis can also be concluded from the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part [Association Agreement, 2014], other Ukrainian legislation - the Laws of Ukraine “On the Electricity Market” [Law of Ukraine, 2017], “On Natural Monopolies” [Law of Ukraine, 2000], “On Protection of Economic Competition” [Law of Ukraine, 2001], etc. The importance of the functioning of this market according to the liberal model and on a competitive basis is emphasized in the works of many scientists (Pashkuda, M., 2024), (Rekova, N.Yu., Bilenka, Y.O., 2017) and studies (OECD, 2023).

That is, despite the fact that the state's use of the specified PSO instrument for the population solves the socio-economic problems of vulnerable segments of the population, such a mechanism has its drawbacks, the biggest of which is the impact on competition in the specified area. At the same time, the Law of Ukraine «On the Electricity Market» [Law of Ukraine, 2017] and the Regulation [Resolution of the Cabinet of Ministers of Ukraine, 2019] do not contain an instrument for tariff differentiation depending on the ability of the population to pay market tariffs. In addition, given the number of market participants who are assigned special responsibilities for the implementation of the PSO instrument for the population, such an instrument leads to the accumulation of debts of everyone to everyone.

CONCLUSIONS

According to the results of the conducted scientific research, it should be noted that the use of the PSO instrument for the population by the state, of course, solves a number of social problems and has its advantages. However, given the need to ensure a competitive electricity market, prevent market monopolization, as well as the accumulation of debts, it is advisable to review some approaches to the legal regulation of the specified mechanism. In particular, the issue of amending the legislation on the electricity market in terms of replacing the PSO mechanism for the population with another instrument that would allow for a balanced provision of electricity to the population, taking into account the socio-economic aspect, and, at the same time, have less negative consequences for ensuring competition in the electricity market of Ukraine, seems quite relevant.

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ПРАВОВІ ПРОБЛЕМИ ПОКЛАДЕННЯ СПЕЦІАЛЬНИХ ОBOB'ЯЗКІВ ДЛЯ ЗАБЕЗПЕЧЕННЯ ЗАГАЛЬНОСУСПІЛЬНИХ ІНТЕРЕСІВ У ПРОЦЕСІ ФУНКЦІОНУВАННЯ РИНКУ ЕЛЕКТРИЧНОЇ ЕНЕРГІЇ НА КОНКУРЕНЦІЮ

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Анотація. У статті розглянуті актуальні питання впливу деяких регуляторних заходів держави на конкуренцію на електроенергетичному ринку України. Наукова робота підготовлена в межах теми фундаментального дослідження «Теоретико-правові засади інноваційного розвитку енергетичної системи» (державний реєстраційний номер: 0124U005149). Визначено основні аспекти правового регулювання покладення спеціальних обов'язків (ПСО) для забезпечення загальносуспільних інтересів у процесі функціонування ринку електричної енергії в Україні. Досліджено регламентацію питання покладення спеціальних обов'язків в зазначеній сфері в Європейському Союзі, а також застереження щодо застосування такого механізму. Встановлено, що найбільш поширеним ПСО в сфері функціонування ринку електроенергетики є «ПСО для домогосподарств». Проаналізовані переваги та позитивний вплив механізму покладення спеціальних обов'язків, а також обґрунтовано основні недоліки зазначеного механізму, в тому числі і для конкуренції. Обґрунтовано, що покладення державою спеціальних обов'язків на учасників ринку електричної енергії має суттєвий вплив на конкуренцію, а встановлення регульованих цін на електроенергію для населення є фундаментально спотворюючим заходом для конкуренції. Констатовано необхідність визначення державою чітких умов, змісту, порядку та строків покладення спеціальних обов'язків на учасників ринку електроенергії. Надані рекомендації щодо заміни механізму покладення спеціальних обов'язків для забезпечення загальносуспільних інтересів у процесі функціонування ринку електричної енергії на інші інструменти які б надали можливість збалансовано забезпечити електроенергією населення з урахування соціально-економічного аспекту, та, водночас, мати менш негативні наслідки для забезпечення конкуренції на ринку електроенергетики України.

Ключові слова: електроенергетика, конкуренція, покладення спеціальних обов'язків (ПСО), регулювання, ринок електричної енергії.

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Abstract. The article considers the current issues of the impact of some regulatory measures of the state on competition in the electricity market of Ukraine. The scientific work was prepared within the framework of the fundamental research topic «Theoretical and legal foundations of innovative development of the energy system» (state registration number: 0124U005149). The main aspects of the legal regulation of the imposition of the public service obligation (PSO) to ensure public interests in the functioning of the electricity market in Ukraine are identified. The regulation of the issue of imposing public service obligations in the specified area in the European Union is studied, as well as the reservations regarding the application of such a mechanism. It is established that the most common PSO in the field of the functioning of the electricity market is “PSO for households”. The advantages and positive impact of the mechanism of imposing public service obligations are analyzed, and the main disadvantages of the specified mechanism, including for competition, are substantiated. It is substantiated that the imposition of public service obligations by the state on participants in the electricity market has a significant impact on competition, and the establishment of regulated prices for electricity for the population is a fundamentally distorting measure for competition. The need for the state to determine clear conditions, content, procedure, and terms for imposing public service obligations on participants in the electricity market is stated. Recommendations are provided on replacing the mechanism of imposing public service obligations to ensure public interests in the process of functioning of the electricity market with other instruments that would provide the population with electricity in a balanced manner, taking into account the socio-economic aspect, and, at the same time, have fewer negative consequences for ensuring competition in the electricity market of Ukraine.

Keywords: electricity, electricity market, competition, the public service obligation (PSO), regulation.

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