



Legal aspects of energy price regulation for household customers and other specific entities

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Abstract: In this article, the author will present issues directly related to the specific rules for the protection and supply of electricity to different groups of customers such as household customers, small and medium-sized enterprises, public institutions. By analysing legal provisions of the energy law and related laws relating to the values and objectives of the energy law, the author will determine the current legal state of affairs and, on this basis, she will try to create *de lege lata* and *de lege ferenda* conclusions. The Polish and European Union legislators are attempting to introduce normative mechanisms to the social problem of high energy prices. The range of entities encompassed by the new, protective legal instruments is broad, because it is not limited to citizens, but also includes groups of small and medium-sized enterprises, as well as various public institutions. The aforementioned entities are encompassed by the universal service namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. In this publication, the author will try to answer the question - whether the enacted solutions are adequate and sufficient to protect the customer who is a household customer or other specific customers?

Key words: customers, energy price regulation, vulnerable customers, household customers, energy market

Introduction

Within the Polish social market economy, the energy sector ensures sustainable economic growth, stabilisation and raising the living standards. The Polish and European Union's (EU) legislators have introduced an universal service to guarantee access to electricity primarily to household customers, but also to other specific entities. However, when the price of electricity rises along with it, the risk of a larger group of society being subjected to the negative occurrence of energy poverty also increases. This may imply a situation in which access to electricity may be straightened or excluded for less affluent social groups.

The Polish and EU legislators are attempting to introduce normative mechanisms to the social problem of high energy prices. The range of entities encompassed by the new, protective legal instruments is broad, because it is not limited to citizens, but also includes groups of small and medium-sized enterprises, as well as various public institutions. Therefore, on this ground the question can be raised - whether the enacted solutions are adequate and sufficient to protect the customer who is a household customer or other specific customers?

The purpose of this article is to examine legal provisions of the energy law and related laws concerning specific rules for the protection and supply of electricity to different groups of customers such as household customers, small and medium-sized enterprises, public institutions. By analysing the provisions relating to the values and objectives of the energy law, the author will determine the current legal state of affairs and, on this basis, she will try to create *de lege lata* and *de lege ferenda* conclusions.

Values and objectives of the energy law

In unique times of high electricity prices, and their rapid spikes, defining the values and objectives of the energy law is particularly important. The energy sector should define it, implement it effectively and enforce it to protect less affluent individuals.

The objectives of energy law are set out at the national level in Article 1(2) of The Energy Law of 10th Apr. 1997 (The Energy Law – the “EL”⁴), and at the EU level in Article 194(1) of the Treaty on the Functioning of the European Union (the “TFUE”)⁵. According to the provisions of the TFEU, the fundamental objectives of the European Union's energy policy are to: ensure the functioning of the energy market; ensure security of energy supply in the Union; promote energy efficiency and energy saving and the development of new and renewable forms of energy; and promote the interconnection of energy networks. In turn, the objectives contained in Article 1(1) of the EL list, and sometimes further specify, provisions of a higher order in the hierarchy of legal acts, such as the Constitution of the Republic of Poland and international agreements ratified with the consent expressed in a law. The aforementioned provision also enumerates the objectives of: creating conditions for sustainable development of the country, development of competition, counteracting the negative effects of natural monopolies, taking into account environmental protection requirements, obligations arising from international agreements and balancing the interests of energy enterprises and fuel and energy customers.

The catalogue of values relevant to energy law includes: a common energy market with effective competition, energy security, energy efficiency and conservation, and environmental protection primarily through the promotion of renewable energy sources and the pursuit of climate policy.

Energy market participants

Participants in the energy market are customers who have entered into a contract with a specific energy company. They are therefore a significant group of entities that have a legal relationship with an energy company. On the grounds of Polish and EU regulations - within the group of “customers”, a distinction is made between final customers, household customers, non-household customers, active customers, wholesale customers, vulnerable customers, energy poor customers and others.

Under Article 3(3a) of the EL, a final customer means a customer who purchases fuel or electricity for its use. The definition is similar to the definition of the identical term from Directive 2019/944 of the European Parliament and of the Council of 5th Jun. 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (“Directive 2019/944) where it is indicated that a final customer is a customer who purchases electricity for own use.

A household customer within the meaning of Article 2(5) of Directive 2019/944 is a customer who purchases electricity for the customer's own household consumption, excluding commercial or professional activities. This definition corresponds to the content of the

⁴ Ustawa z dnia 10 kwietnia 1997 r. Prawo energetyczne (consolidated text: Journal of Laws 2022, item 1385, as amended).

⁵ Treaty on the Functioning of the European Union (consolidated text: Official Journal of the European Union of 2012, C 326).

definition adopted under the EL in the provision of Article 3(13b). A non-household customer within the meaning of Directive 2019/944 means a natural or legal person who purchases electricity that is not for own household use, including producers, industrial customers, small and medium-sized enterprises, businesses and wholesale customers. Directive 2019/944 also distinguishes "wholesale customers", which means a natural or legal person who purchases electricity for resale inside or outside the system where that person is established (Article 2(2)).

A specific group of customers are "vulnerable customers" (Article 28(1) and (2) of Directive 2019/944). Member States shall take appropriate measures to protect customers and shall ensure, in particular, that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times. The concept of vulnerable customers may include income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take measures to protect customers in remote areas. They shall ensure high levels of customer protection, particularly concerning transparency regarding contractual terms and conditions, general information and dispute settlement mechanism (Article 28(1) of Directive 2019/944).

The vulnerable customers group is the group that is included in the household customers group. Directive 2019/944 prohibits the disconnection of electricity to the groups of customers whose is in critical situations. At the same time mentioned Act directs Member States to ensure their respective rights and obligations by taking measures to protect this group of customers in remote areas. Article 29 of Directive 2019/944 directs Member States to establish and publish a set of criteria, which may include low income, high expenditure of disposable income on energy and poor energy efficiency.

Energy poverty means a situation where a household run by one person or by several persons jointly in a self-contained dwelling or in a single-family dwelling in which no commercial activity is carried out cannot afford sufficient heat, cooling and electricity to supply appliances and lighting, where the household collectively fulfils certain conditions (Article 5gb of the EL).

Universal service as a guarantee of access to electricity

Services of general economic interest (Article 14 of TFEU) are a basis of the European social model, are an expression of the common values of the European Union and contribute to increasing the quality of life, promoting social and territorial cohesion (Article 36 of the Charter of Fundamental Rights of the European Union⁶) and eliminating social exclusion. Universal services are different from ordinary services because public authorities (specific States) recognise that certain types of services must be provided - even when there is insufficient market prosperity for them or the market does not provide sufficient incentives for their provision⁷.

⁶ Charter of Fundamental Rights of the European Union (consolidated text: Official Journal of the European Union of 2012, C 326/391).

⁷ Communication from the Commission — Services of general interest in Europe (Official Journal of European Union of 2001, C 017, 19.01.2001), point 14.

The provisions of Directive 2019/944 provide for the empowerment and protection of customers by guaranteeing them the right to purchase electricity at a specific price. According to Article 10(1) of Directive 2019/944, Member States shall ensure that all final customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, provided that the supplier follows the applicable trading and balancing rules. In turn, the provision of Article 27 of the aforementioned Directive indicates that Member States shall ensure that all household customers, and, where Member States deem it to be appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. The provision of universal service understood in this way is an obligation of the Member States.

Under Polish law, this obligation is implemented through the regulation of ex officio sellers. They are appointed by the President of the Energy Regulatory Office by way of a tender in which energy enterprises holding concessions for trading in gaseous fuels or electricity may participate. In addition, an energy company engaged in the transmission or distribution of gaseous fuels or energy is also obliged to conclude a grid connection agreement with entities applying for grid connection on an equal treatment and connection basis (Article 7 of the EL). In turn, the institution of a lump-sum energy allowance (Article 5c(1) of the EL) is intended as a solution to assist the economically weakest electricity customers.

Electricity price on the energy market

In economic terms, price is the quantity of goods given or received in exchange for another good⁸. Within the numerous groups of energy market participants, a distinction is made between prices for customers, which include specific groups of customers such as household customer, vulnerable customers, enterprises, state institutions and public use entities (e.g. hospitals, libraries). Other types of prices are wholesale prices (prices of energy producers) and infrastructure prices (related to storage, transmission and distribution of electricity).

The price of electricity is part of the cost that customers are obliged to pay. The total monetary sum of the sale and distribution of energy to the consumer is a composite cost, including: costs (cost of electricity), public charges in the form of taxes (goods and services tax, excise duty), fees (e.g. power fee, distribution fee, quality fee, renewable energy fee, cogeneration fee).

Energy prices depend on price tariffs. The term “price tariffs” is defined in Article 3(17) of the EL as a set of prices and fee rates and the conditions for their application, developed by an energy company and introduced as applicable to the customers specified therein by the procedure set out in the Act. The tariff consists of the designation of the tariff group, the contracted power and the time zone.

In Poland, the general regulation is that licensed energy companies set energy tariffs, which must get approval from the President of the Energy Regulatory Office, and propose their duration (Article 47(1) of the EL). However, an announcement from the President of the Energy Regulatory Office of 31st Oct. 2007 led to the exemption of energy enterprises with electricity

⁸ Fetter A. Frank, *The definition of price*, *The American Economic Review*, vol 2, no. 4, 1912. <https://www.jstor.org/stable/1828191> (access: 01.07.2023).

trading licences from the obligation to submit tariffs for approval⁹. By order of 14th Dec. 2007, the obligation to submit tariffs for the tariff group G11 for approval was imposed¹⁰.

Under Article 57(1) of Directive 2019/944, each Member State shall designate a single regulatory authority at the national level. The Polish regulatory authority is the President of the Energy Regulatory Office. It is an independent, professional, specialised authority, which has been equipped by the national legislator with the powers defined by the EL. Regulatory authorities should also be granted the power to contribute to ensuring high standards of universal and public service obligations by market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures (Directive 2019/944).

There are mainly four tariff groups: "A", "B", "C", "G". Tariff group "A" includes the largest electricity customers (e.g. mines, factories). Group "B" includes large enterprises and "C" – small and medium-sized enterprises and households. Group "G" is dedicated to household customers. Contracted power is the amount of electricity that the distribution system operator can supply to a specific point of consumption under a contract between the electricity company and the customer (§ 2 (17) of Polish Decree of the Minister of Climate and Environment of 22nd March 2023 on detailed conditions for the operation of the electricity system¹¹. The definition of time zones allows appropriate billing to be made for electricity consumption, indicating the time units in which it is more or less expensive for its customers. Sometimes, the letters "b", "a", "w" are also added to the tariff designation to indicate how the day is divided into time zones.

The multiplicity of variants of electricity tariffs is dictated by the need to adapt the relevant price rates to the abilities and needs of specific customer groups. As a general rule, tariffs are set in advance for a long period, which implies that the current energy system is not focused on rewarding customers' flexibility and shifting consumption according to demand and sales. The above-mentioned makes it possible to describe the Polish electricity pricing system as a "rigid" system, which is not prepared for new, more demanding challenges related to the development of technology, the increasing popularity of renewable energy sources, and the current energy crisis.

In the Polish and European public space, dynamic tariffs are a topic of discussion, which could solve problems related to excessive or too low demand for electricity at certain times of the day. The assumption is that the price rates for electricity in a dynamic tariff could reflect the actual value of energy in actual time, thus avoiding a situation of electricity production over demand, as occurred on 23th Apr. 2023 in Poland, when the Transmission System Operator (TSO) declared a security of electricity supply alert¹² The TSO's announcement was made due to the production of electricity from renewable energy sources being in excess of its demand.

It should be emphasised that some outlines of the concept of dynamic tariffs are already to be found in Directive 2019/944, which introduces a new type of contract called "dynamic

⁹ President of the Energy Regulatory Office's information: <https://www.ure.gov.pl/pl/urzed/informacje-ogolne/komunikaty-prezesa-ure/3032,Informacja.html> (access: 01.07.2023).

¹⁰ *Ibid.*

¹¹ Polish Decree of the Minister of Climate and Environment of 22nd March 2023 on detailed conditions for the operation of the electricity system (consolidated text: Journal of Laws 2023, item 819).

¹² The Transmission System Operator has identified a danger to the security of electricity supply, <https://www.pse.pl/-/komunikat-osp-o-wystapieniu-stanu-zagrozenia-bezpieczenstwa-dostaw-energii-el-ektrycznej?safeargs=696e686572697452656469726563743d74727565> (access: 01.07.2023 r.).

electricity price contract” and a new participant – “active customer”. The first term means an electricity supply contract between a supplier and a final customer that reflects the price variation in the spot markets, including in the day-ahead and intraday markets, at intervals at least equal to the market settlement frequency (Article 2(15) of Directive 2019/944). An active customer is a final customer, or a group of jointly acting final customers, who consumes or stores electricity generated within its premises located within confined boundaries or, where permitted by a Member State, within other premises, or who sells self-generated electricity or participates in flexibility or energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity (Art. 2(8) of Directive 2019/944).

Directive 2019/944 assumes that an active customer responds to signals from the energy market and in return receives some benefits (mainly financial). The first type of active customer is prosumers using *net billing* – a type of charging and rewarding prosumers, based on the real market value of electricity. The establishment of universal dynamic tariffs would make it possible to extend the group of active customers to other groups. However, the introduction of universal dynamic tariffs would allow the group of their customers to be extended to other groups, but in this situation, certain legislative as well as factual changes are required – for example, the replacement of current metering systems with smart metering systems and the modernisation and expansion of transmission and distribution networks.

Tariffs, according to Article 45 of the EL, must be developed based on two main principles. The first one is the principle that tariffs cover the energy companies’ justified costs and the second is the principle that tariffs ensure a return on the energy companies’ capital. Under Article 3(21) of the EL, justified costs are costs necessary for the performance of obligations arising in connection with an energy undertaking's operations in the field of production, processing, storage, transmission and distribution, and trade in fuels or energy, and adopted by the energy undertaking for the calculation of prices and fee rates set in the tariff in an economically justified manner, with due diligence aimed at protecting the interests of customers; justified costs are not tax-deductible costs within the meaning of the tax legislation. Subject literature emphasises that justified costs should be based on reasonable and proven costs of producing and supplying energy to customers. The decision as to whether to consider a cost as justified should be preceded by appropriate mathematical, economic and financial processes. It is a limiting principle, self-limiting the state's discretion to protect customers from unreasonably high electricity prices. It does not allow the realisation of excessive, monopolistic profits of energy companies.

However, the application of this principle involves certain dangers, which are expressed in the recognition that if the justified costs are high, the price level of electricity must also be kept high. On the one hand, the EU and national legislators indicate that access to electricity is a universal service with a strictly guaranteed character. On the other hand, Article 27 of Directive 2019/944 constitutes that Member States shall ensure that all household customers, and, where Member States deem it to be appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices.

Given the above - how does the term and *ratio legis* of “justified costs” introduced by the Polish legislator corresponds with Article 27 of Directive 2019/944, as well as with the values and objectives of the Energy Law. In a situation of high energy prices, there is a possibility of a conflict between an entity that is not capable of paying the cost of the electricity purchased

and the financial bill of the energy company concerned. However, subject literature points out that there is one principle, of the most general nature, which collects the other principles. This is the common good, understood as the sum of social, economic, political, and cultural conditions that allow individuals and their organisations to develop to their full potential. Energy policy should be pursued so that every member of society can develop fully within it.

The term “cost of capital”, in turn, is commonly understood in economic science and business practice of enterprises as the cost of compensation of the equity capital employed, which should be reflected in the size of the dividend, or the cost of raising external capital, i.e. debt, which from a balance sheet point of view is the cost paid to the parties financing the activities of the energy enterprise concerned. This principle means that an energy company's tariff should compensate the cost of either equity or third-party capital employed in financing the company's operations.

Price regulation mechanisms for energy customers

Energy poverty is a specific situation that can affect different groups of customers. Eurostat data conducted for 2022 shows that 9.3% of the European population was affected by this negative effect, while in 2021 this number was 6.9%¹³. It means that in 2021, 29.9 million Europeans could not afford to keep their homes adequately warm, according to Eurostat¹⁴. The Polish legislator, wishing to protect different groups of customers in the difficult situation of high electricity prices, introduced several extraordinary and timely mechanisms to solve this social problem. These include: anti-inflation shields, a reduction in excise duty on electricity, and a freeze on electricity prices. There is also the institution of an energy allowance under Polish energy law.

In connection with the difficult economic situation at the beginning of 2022, the Polish legislator decided to introduce the incidental institution of an anti-inflation shield through the Anti-inflation Shield Act of 17th Dec. 2021¹⁵. This is a form of support for household customers affected by the increase in prices of electricity, food, heating. Anti-inflation shields consist of granting eligible entities a one-off cash benefit, paid in one or two tranches. It is intended to compensate for the increase in the cost of heating buildings and flats. The justification of the bill for the above-mentioned Act states that the anti-inflation shield is intended to support 6.84 million households in Poland and is intended to help pay part of the energy costs and the related rising food prices¹⁶. The main criteria for granting it are Polish citizenship, residence and actual stay in the territory of the Republic of Poland and an income criterion. There is also a possibility that foreigners who have their place of residence and reside in the territory of the Republic of

¹³ Eurostat (June 2022 - Inability to keep home adequately warm, European Union - 27 countries from 2020): https://ec.europa.eu/eurostat/databrowser/view/ILC_MDES01/default/table?lang=en (access: 01.07.2023 r.).

¹⁴ European Commission, The “Inability to keep home adequately warm” indicator: Is it enough to measure energy poverty?, https://energy-poverty.ec.europa.eu/about-us/news/inability-keep-home-adequately-warm-indicator-it-enough-measure-energy-poverty-2023-02-03_en (access:01.07.2023) and also Data from Eurostat (June 2022 - Inability to keep home adequately warm, European Union - 27 countries from 2020).

¹⁵ Ustawa z dnia 17 grudnia 2021 r. o dodatku osłonowym (consolidated text: Journal of Laws 2022, item 1, as amended).

¹⁶ Bill of the Shielding Allowance Act of 17th Dec. 2021 (Parliamentary print no. 1820, p. 11 of the file): <https://orka.sejm.gov.pl/Druki9ka.nsf/0/70EDD6EF4AB92EBBC12587A300678F49/%24File/1820.pdf> (access: 01.07.2023 r.).

Poland may be included by the anti-inflation shield after fulfilling other criteria listed in Article 2(4) of the Anti-inflation Shield Act of 17th Dec.2021.

The energy allowance, which is also referred to in the Anti-inflation Shield Act of 17th Dec.2021, is intended for a narrower group of customers - vulnerable customers. By Article 3(13c) of EL a vulnerable customer can obtain an energy allowance when the customer has been granted a housing allowance¹⁷, is a person who is a party to a comprehensive agreement or an agreement for the sale of electricity concluded with an energy company and resides at the place of electricity supply. In turn, housing allowance is granted to persons who fulfil certain housing, income and area criteria. This requirement is absolute and the above-mentioned Act does not provide for any exceptions in this respect. The legislator has not left it to the administrative body adjudicating on these matters to act within its administrative discretion.

Under Article 9(1)(2) of the Excise Duty Act of 6th Dec. 2008¹⁸, the sale of electricity to a customer in the territory of the Republic of Poland is subject to excise duty. In turn, the provision of Article 89(3) of the aforementioned Act indicates that the excise rate for electricity is (as a standard) PLN 5.00 per megawatt-hour (MWh). The already repealed Article 9 of the Act of 12th May 2022 amending the Act on Goods and Services Tax and certain other acts¹⁹ indicated that a seller selling electricity to a customer was obliged, until 31st Dec. 2022, to provide that customer with information on the exemption from excise duty or the reduced rate of excise duty on electricity, respectively:

(1) by enclosing that information each time with the invoice or other document from which payment for the electricity was derived, or

(2) separately, where the invoice or other document giving rise to the payment of the amount due for the electricity was sent after 31 Jul. 2022.

The excise duty reduction of electricity was originally intended to be in force until 31 May 2022, but due to the continuing situation of high prices in the Republic of Poland, the legislator decided to extend the condition in question until 31 Jul. 2022. In the end, the mechanism remained in force until the end of 2022.

Through the enforcement of the Act of 27th Oct. 2022 on emergency measures to reduce electricity prices and support certain customers in 2023²⁰, the Polish legislator has established an “electricity price freeze”. It is based on the fact that an energy company performing economic activity in the area of electricity trading or generation applies a maximum price in settlements with eligible customers connected to the distribution or transmission network. The purpose of this legislation is to reduce the rising costs of purchasing electricity for these entities, particularly as a result of the increase in energy purchase prices on the wholesale market, which in turn is reflected in the level of prices in contracts concluded by these entities with sellers for the sale of electricity. The price of electricity in the period from 1st Dec. 2022 to 31st Dec. 2023 was originally to be frozen at the 2022 price level for the following limits:

¹⁷ Article 2(1) of Housing Allowances Act of the 21st June 2001 (Ustawa z dnia 21 czerwca 2001 r. o dodatkach mieszkaniowych - consolidated text: Journal of Laws 2021, item 2001, as amended).

¹⁸ Ustawa z dnia 6 grudnia 2008 r. o podatku akcyzowym (consolidated text: Journal of Laws 2009, item 11).

¹⁹ Ustawa z dnia 12 maja 2022 r. o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw (consolidated text: Journal of Laws 2022, item: 1137, as amended).

²⁰ Ustawa z dnia 27 października 2022 r. o środkach nadzwyczajnych mających na celu ograniczenie wysokości cen energii elektrycznej oraz wsparciu niektórych odbiorców w 2023 roku (consolidated text: Journal of Laws 2022, item: 2243, as amended).

- up to 2 MWh per year - for all households,
- up to 2.6 MWh per year - for households with persons with disabilities,
- up to 3 MWh per year - for households with a Large Family Card and farmers,
- up to 250 kWh per year - for a plot in a family allotment garden.

The justification for the bill to an Act being commented on specifies the three main groups of customers for whom the legislator decided to enact it. It was pointed out that “(...) *high electricity prices are most affected by household customers, in particular vulnerable customers and those affected by energy poverty. Another group of customers sensitive to electricity price fluctuations is the broadly defined public utilities*”²¹.

To qualify a customer as an “entitled customer” within the meaning of the commented Act, it was necessary for that customer to submit a special declaration by 30th Jun. 2023. The declaration was submitted to the “entitled entities”, i.e. energy companies carrying out business activities in the field of electricity trading. The amount of compensation was calculated by the energy sellers. They are due for each calendar month from the date on which the entitled entity started to apply the maximum prices for electricity trading in its settlements with entitled customers.

However, the commented Act is at the stage of amendment and the regulations presented above may change²². The government's bill to amend the Act on special solutions for the protection of electricity customers in 2023 in connection with the situation on the electricity market and to amend certain other acts provides for the extension of customer support by, inter alia:

- increasing the basic energy consumption limit subject to the price freeze at the 2022 level for households (from 2 MWh to 3 MWh), households with disabled persons (from 2.6 MWh to 3 MWh) and families with a Large Family Card and farmer households (from 3 MWh to 4 MWh);
- a reduction in the maximum price of electricity from 785 PLN/MWh to 693 PLN/MWh in the 4th Quarter of 2023 to provide additional support to small and medium-sized enterprises, local governments, public utilities and other vulnerable entities.

EU climate and energy policy and its impact on current electricity prices

The wording of Article 194(1) TFEU leaves no doubt that the European Union's energy policy is implemented in close connection with the establishment and functioning of the internal market. This is supported by the fact that ensuring the functioning of the internal market is listed as the first objective of EU energy policy.

Three principles of the European Union's internal market seem to be of particular relevance to that issue²³. The first one is the principle of third-party access to the transmission and

²¹ Justification of the bill of the Act of 27th October 2022 on emergency measures to reduce electricity prices and support certain customers in 2023, p. 56 of the file <https://orka.sejm.gov.pl/Druki9ka.nsf/0/73BA58EBE9B26B38C12588DB006482B2/%24File/2697.pdf> (access: 01.07.2023).

²² Progress of work on the government's bill of an Act of 27th October 2022 on emergency measures to reduce electricity prices and support certain customers in 2023: <https://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=14FAD3A8E5F41166C12589E900541876> (access: 01.07.2023).

²³ Lissoń P. points to the existence of five major principles of the European Union internal market: 1) the principle of third-party access to the transmission and distribution system, 2) the principle of approval of tariffs or the methods used to calculate them, 3) the principle of freedom of choice of supplier (seller) of electricity, 4) the principle of setting supply (sale-) prices of electricity based on market mechanisms, 5) the principle of separation of energy

distribution systems based on published tariffs, applicable to all customers and applied objectively and without discrimination between system users (Article 6 of Directive 2019/944). The second is the principle of freedom of choice of energy supplier (seller), as expressed in Article 10 of Directive 2019/944, regardless of the Member State in which the supplier is registered. The third is the principle of setting the prices for the supply (sale) of electricity based on market mechanisms, which implies a fundamental abandonment of the regulation of these prices (Article 59 of Directive 2019/944). Article 5(1) of the aforementioned Directive said that suppliers shall be free to determine the price at which they supply electricity to customers. Member States shall take appropriate actions to ensure effective competition between suppliers. Member States shall ensure the protection of energy poor and vulnerable household customers pursuant to Articles 28 and 29 by social policy or by other means than public interventions in the price setting for the supply of electricity (Article 5(2) of Directive 2019/944).

EU in Article 27 of Directive 2019/944 provides the right to be supplied with electricity of a specified quality within Member States' territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. The provision indicates that, to ensure the regulation of universal service, Member States may designate a supplier of last resort.

In a situation of high electricity prices, the EU legislator introduces solutions to reduce the effects of electricity prices by, inter alia, reducing energy demand and redistributing surplus revenues and profits of the energy sector enterprises and household customers. The above is set out in Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (the "Regulation 2022/1854")²⁴. Regulation 2022/1854 introduces a voluntary target to reduce total monthly gross electricity consumption by 10% (Article 3(1)) and a mandatory target to reduce electricity demand by at least 5% on average per hour (Article 4(2)). The act also allows for Member States (under certain circumstances) to intervene by either fixing the price of electricity supply for small and medium-sized enterprises or setting the price of electricity below cost, provided that four criteria are met²⁵ (Article 13 of the Regulation 2022/1854). Another form of support for energy consumers is the establishment of a temporary solidarity levy for EU companies and permanent establishments, active in the oil, gas, coal and refining sectors, which is based on taxable income, as determined by national tax legislation, in and throughout the fiscal year 2022 or fiscal year 2023, over a 20 per cent increase in average taxable income, as determined by national tax legislation, in the four fiscal years starting on or after 1st January 2018.

transmission or distribution activities from other activities not related to energy transmission or distribution (unbundling).

²⁴ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (Official Journal of the European Union of 2022, L1 261/1).

²⁵ See an Article 13 of the Regulation 2022/1854: *By way of derogation from Union rules on public interventions in price setting, when applying public interventions in price setting for the supply of electricity pursuant to Article 5(6) of Directive (EU) 2019/944 or to Article 12 of this Regulation, Member States may exceptionally and temporarily set a price for the supply of electricity which is below cost provided that all of the following conditions are fulfilled: (a) the measure covers a limited amount of consumption and retains an incentive for demand reduction; (b) there is no discrimination between suppliers; (c) suppliers are compensated for supplying below cost; and (d) all suppliers are eligible to provide offers at the price for the supply of electricity which is below cost on the same basis.*

Summary

In the difficult situation of high electricity prices, both - the Polish and the EU legislators are introducing temporary solutions to the problem. However, these mechanisms are not part of LE, but are included in separate, specially enacted Acts by the legislator, thus contributing to the problem of law inflation and its lack of transparency. The above-mentioned attempts to introduce various customer protection regulations imply the conclusion that the general provisions of energy law at both (national and EU level) are not adequate to the possibility of sudden energy price spikes. Customers should have a guarantee that the electricity price is fair, expected and adequate to their economic and financial possibilities.

The above indicates that in energy market crises at both EU and national levels, the protection of household customers is complex, but not sufficient. Because the energy market is closely related to the international economy and affected by the current geopolitical situation, the possibility of further situations in which customers will have to face high energy prices, should not be ruled out. This implies the thesis that the Polish and EU legislators must take appropriate actions to introduce protective mechanisms for various entities. It is essential for these mechanisms to be part of the energy law and to ensure the customers' access to energy at a fair, expected and adequate price.

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