

Security, regulation and competition of the energy market **– 2nd National Academic Conference, Łódź, 26 April 2018**

On 26 April 2018, the second National Academic Conference ‘Security, regulation and competition of the energy market’ was held at the Faculty of Law and Administration of the University of Łódź (hereinafter; WPiA UŁ). The Society of Energy Law and Other Infrastructural Sectors of the University of Łódź (hereinafter; NKPEiISI) acted as the main organiser of the Conference. The event was held under the honorary patronage of the Prime Minister Mateusz Morawiecki, the President of the Energy Regulatory Office and the Centre for Antitrust and Regulatory Studies of the University of Warsaw. The co-organisers of the Conference were: the Department of European Economic Law of WPiA UŁ, the Polish Foundation of Competition Law and Sector Regulation *Ius Publicum* in Warsaw (*Ius Publicum* Foundation) and the University of Economics in Katowice. Polskie Górnictwo Naftowe i Gazownictwo S.A. (hereinafter; PGNiG) acted as the Strategic Partner of the initiative. The event was a follow-up to the first National Academic Conference ‘Security and regulation of the energy market’, held on 24 May 2017¹.

The Conference was opened by its organiser – M. Kraśniewski (Chairman of the Board of NKPiISI, Deputy Chairman of the Board of the *Ius Publicum* Foundation). He welcomed all the guests, especially the co-organisers of the conference – Professor Maria Królikowska-Olczak D. Sc. (Head of the Department of European Economic Law of WPiA UŁ), Professor Mirosław Pawełczyk, D. Sc. (University of Silesia, Chairman of the Board of the *Ius Publicum* Foundation) Marzena Czarnecka, PhD (Assistant professor, University of Economics in Katowice). Furthermore, he expressed his gratitude to all the moderators and speakers for their involvement in the preparation of the agenda for this year’s Conference. A special word of thanks was extended to the Members of the Programme Board of the Conference, who contributed significantly to the substantive framework of the Conference. Next, the co-organisers of the Conference and the Associate Dean of WPiA UŁ Zbigniew Świdorski, PhD took the floor. They welcomed the guests and noted individual substantive aspects of the Conference as well as at its meaning for academic discourse.

¹ M. Kraśniewski, W. Modzelewski, M. Sokół ‘Security and regulation of the energy market’ – first National Academic Conference on the 5th anniversary of the Society of Energy Law and Other Infrastructural Sectors of the University of Łódź, 24 May 2017, YARS 2017, issue 10(16), p. 229–237.

Then, the Łódzkie Province Governor Professor Zbigniew Rau D. Sc. read a letter to the Organisers and Participants of the Conference from the Prime Minister Mateusz Morawiecki. In the introduction, the Prime Minister highlighted the importance of the energy sector, a vital element of State policy. He stressed that the unique specificity of this sector led to the need to create a regulatory regime based on EU legislation, such as the third energy package, as well as the need to ensure the continuity of supply. However, it was also pointed out that changes would have to take place while maintaining a price level that is acceptable for the final customers. Therefore, the State pays significant attention to legislative processes in relation to the energy sector. Prime Minister Morawiecki stressed that such an approach was expressed by the provisions of the Sustainable Development Strategy. The Chairman of the Council of Ministers stated that the provisions of the Strategy were impossible to implement without active involvement of scholars, experts and business people. Later on, he praised the Organisers for the selection of the topics for this year's Conference, which fully coincided with the Government's activity in the energy sector. Prime Minister Morawiecki linked energy security with the active policy of diversifying the sources of natural gas supply to Poland, and the introduction of the capacity market mechanism that ensures the continuity of energy production. Furthermore, he tied the regulation with the Act on Electromobility and Alternative Fuels, which was adopted at the beginning of the year. It was stressed that in duly justified cases, purely market conditions of economic trade had to make room for a higher good, for example, innovation. Prime Minister Morawiecki considered competition to be the most effective mechanism for the provision of goods and services, including energy, to citizens and enterprises.

Next, Konrad Fischer (Director at the Ministry of Innovation and Development) read a letter by the Minister Piotr Naimski (Secretary of State at the Chancellery of the Prime Minister, Government Plenipotentiary for Strategic Energy Infrastructure). Piotr Naimski highlighted the importance of the implemented diversification of gas supply sources to Poland in the context of the upcoming expiration of the multi-year contract with the Russian supplier GAZPROM. In his opinion, the activity related to the expansion of the President Lech Kaczyński Terminal in Świnoujście, and the construction of the *Baltic Pipe* pipeline were vital for State security and would help to ensure actual price competition on the Polish gas market. Minister Naimski also referred to the current activity of the Government in relation to the energy sector. Particular attention was paid to the Capacity Market Act, which will modernise the Polish energy sector based on national resources, which will translate into stable and uninterrupted energy supply.

The opening of the Conference was followed by the first panel – 'Energy market between security and regulation'. The session was moderated by Professor Bartłomiej Nowak D. Sc. (Kozminski University). The speakers were: Maciej Matecki (Chairman of the Sejm's Energy and State Treasury Committee), Professor Andrzej Powałowski D. Sc. (Head of the Department of Public Economic Law and Environmental Protection Law of the Faculty of Law and Administration at the University of Gdańsk), Professor Jan Wojtyła D. Sc. (professor of the Department of Law and

Insurance at the University of Economics in Katowice), Piotr Woźniak (Chairman of the Management Board of PGNiG), Paweł Ostrowski (Deputy Chairman of the Management Board of Towarowa Giełda Energii), Arkadiusz Zieleźny (Chairman of the Management Board of POLENERGIA Obrót S.A.), Anna Żyła (Chief Ecologist in the Bank for Environmental Protection).

Professor Nowak pointed out that principally the energy sector was not subject to competition rules, which resulted from the domination of natural monopolies on the market. The network industry itself has a highly capital intensive nature – investments in energy are very costly, and the return on equity is slow. Moreover, the market has a small number of players. The regulation is seen as a substitute for competition on the market, which is not fully effective. Next, the Moderator asked Professor Powalowski about energy regulation in the context of Article 22 of the Constitution of the Republic of Poland.

Professor Powalowski began his speech by stating that Article 22 of the Constitution of the Republic of Poland provides for boundary conditions of rationing as well as regulation (harmonising regulation). The regulation itself applies to all infrastructural sectors. It can be of a rationing character. The speaker stressed that Article 22 of the Constitution of the Republic of Poland required the adoption of an act in order to introduce certain regulation and to indicate the public interest for each and every legislative activity. Then, he pointed out that the public interest had a broad definition – it covered notions of the axiological sphere as well as long-term and current policy. In Professor Powalowski's opinion, it was reasonable, albeit not always, to combine the public interest with the social interest, provided that the State (State institutions) was the bearer of the interest. The public interest is combined with the need to specify objectives accepted by the State and the society itself. In the energy sector, the legislator should regularly attempt to make the society aware, rather than only the energy industry, of the objectives it pursues.

Next, Professor Bartłomiej Nowak asked Arkadiusz Zieleźny about the importance of legal stability and clarity for the functioning of an energy company. Mr Zieleźny said that regulation should help to determine the relation between 'the energy sector' and the client as well as between the State and private investors. The activity of private investors in the energy sector ensures functioning competition in this sector and external capital, which in turn should lead to a more optimal use of national deposits of energy-producing raw materials and improved national welfare. Therefore, legal predictability is essential for the functioning of energy companies. Instability leads to difficulties in gaining investors' trust. A. Zieleźny gave an example of the consequences of legal instability – the Renewable Energy Sources (hereinafter; RES) sector. The initial drafting stage of the Act on Renewable Energy Sources included preferences with the aim to convince private companies to invest in this industry. During later stages of the work on that Act, negative solutions, which did not encourage investments, started to appear. Instability may cause perturbation in the sector, exemplified by the RES market, which has been restructured on numerous occasions and witnessed several bankruptcies. Such situation does not create appropriate conditions for increased investment. Market standardisation is essential.

Professor Wojtyła drew attention to the dimensions and importance of energy security. It has its own economic, social and legal dimension. All of them should be taken into account – security is a certain result of these three dimensions and it is difficult to say which one is the most important. According to Professor Wojtyła, the methodology of combining these diverse dimensions was the most important aspect here, because security could not be considered without taking into account the whole system. When adopting specific legal solutions, one must remember the constant volatility in the energy market as well as the great game of interests that determines the behaviour of the main players. According to the invited guest, the key issue was the ability to predict changes that might occur on the market. Professor Wojtyła said that the first question that should be asked was of the rationality of legal solutions. He warned against the omnipotent meaning of the law in shaping the behaviour of individual players, because it was impossible in a free market economy. Also, the role of the State is quite limited due to EU regulations on unlawful State aid. Professor Wojtyła also stated that economic solutions were coded in individual legal norms – if an adopted economic solution was defective, the law that contained it was defective as well. When conducting research, it is also important to determine the root cause of an error – whether it lies in the economic system or in the legal system. In general, the error occurs in both systems, but it is necessary to separate them. The weakness of the law is also caused by instability – one rule changes several times a year. This state of affairs results from the lack of an appropriate concept (policy). The speaker stated that a certain reference was the energy policy of the European Union, which was implemented under national conditions. However, the lack of a defined national energy policy leads to significant economic problems (an example is the coal sector). Next, he asked a question about the direction of Polish energy policy. He mentioned diversification of supplies as those directions, but at the same time he pointed out that a stable base of raw materials was important. For these reasons, it is necessary to make political decisions for the development of a hard coal base in Poland, which should be an important component of a larger whole. The speaker also stated that the greater the diversity, the higher the level of energy security. He at the same time underlined that the level of security depended on a stable energy policy. According to Professor Jan Wojtyła, stability in this matter is already noticeable – this confirmed the improvement of the condition of mining in Poland. He also mentioned that solidarity between the power industry and the mining industry gave good results and that there was hope for the stability and effectiveness of that solidarity in the future.

Next, Professor Bartłomiej Nowak asked Anna Żyła about the opinion of the banking sector on the energy industry regarding the financing of energy investments. She described the energy sector as very interesting for banks, but at the same time difficult when it comes to investment. The problem of the sector results from the domination of regulations, which should be stable. She pointed out that energy investments were of long-term nature – in the case of energy investments a standard crediting period was 15 years. Ms Żyła believes that the energy sector could not be treated only as a market. The mechanisms used on the RES market are quasi-market mechanisms and require appropriate conditions in order to function. Legal instability

directly translates into the involvement of banks in the energy sector. A. Żyła claimed that the energy market needed many investments and required legal stability as well as State support. The banking sector itself has noticed not only large investments in energy but also smaller ones, such as investments in distributed renewable energy. Ms Żyła stated that the profitability of energy investments had to be ensured in order to develop new technologies that would be likely to be fully implemented. In her opinion, this state depended largely on the energy mix, which in turn was reliant on State energy policy. Anna Żyła claimed that the energy policy was neither stable nor clear in many aspects. She expressed hope that this situation would change soon and lead to a stabilisation of the regulatory environment for future investments. Moreover, she added that the driving forces, such as the RES and prosumer energy, would not stop, but stable law was required for them to function properly.

According to the TGE Vice-Chairman, legal stability was very important for the functioning of the stock exchange, which is, without a doubt, crucial for the correct functioning of the energy sector. Paweł Ostrowski also said that the stock exchange was one of the elements that ensured energy security because it settled accounts as the Accounting Chamber. In his view, the stock exchange was also a beneficiary of energy policy, which in the longer perspective was very ambitious – in these plans he saw new opportunities for TGE.

The Chairman of PGNiG – Mr Piotr Woźniak – stated that the energy industry could not escape regulation as there was no way back from it. Piotr Woźniak referred to his experience from the work in the Energy Regulators Regional Association, where work was carried out in relation to numerous codifications for the energy industry. As a result of that work, in 2009 seventeen codes were drawn up along with numerous regulatory frameworks. This direction should be continued. However, such an approach suffered a spectacular setback one and a half year ago when, in among the accepted codes and guidelines, an auction for the capacity in the OPAL gas pipeline was decided. In compliance with all provisions, within 24 hours, the entire capacity was booked by one gas company – Gazprom. According to Chairman Woźniak, such a situation resulted from the imperfection of the regulation – this imperfection of the law allowed for the entire capacity of the gas pipeline to be booked up to 2034. Piotr Woźniak also said that the energy market could function in some respect without regulation and could resist current regulation. The best examples of the above were price crumps on the oil market from a few years ago – despite the adverse conditions, it did not come to spectacular bankruptcies, takeovers or mergers.

In a further discussion, Professor Bartłomiej Nowak drew the participants' attention to the issue of energy security. First, he asked Professor Jan Wojtyła to present his definition of energy security. According to the speaker, security is a system that would ensure the implementation of objectives. Professor Wojtyła noted that there was no doubt that the goals of individual countries were variously defined and changed over time. In order to adopt the definition of energy security, the starting point should be to set goals and values, which need to be protected and can be implemented in this context – this is methodologically correct. He also argued that one of the imperfections of Polish legislation was the unlimited formulation of definitions – almost every act

starts with definitions. The speaker recommends caution in formulating definitions because it is difficult to talk about one definition of a given phenomenon. As an example, he mentioned security, which in a very narrow perspective (for example, limited to the provision of a specific energy carrier) is something different than in the broad sense. However, Professor Jan Wojtyła said that special importance should not be given to definitions because the adopted strategy was more important.

According to Professor Powałowski, it was hard to define energy security. However, there are grounds related to the protection of energy security. In his opinion, the social market economy made it imperative to ensure energy security. The energy industry is connected with social needs and, therefore, it will never be a classic market – it is a collision of the market and social needs. According to Professor Andrzej Powałowski, this state of affairs is the reason why the liberalisation and privatisation of the energy industry would never be absolute. The speaker disagreed with the thesis that the law follows the economy. If this assumption was real, the law would refer to privatisation of the energy industry and would be determined by economic factors. However, in order to ensure energy security, economic factors are not essential, unlike State policy and a number of axiological values (for instance diversification or solidarity).

Maciej Małecki began his paper with the definition of energy security from the recipients' point of view – provision of constant and uninterrupted energy supplies for an affordable price. According to Minister Małecki, a regulation that safeguarded the country against the dependence on a single gas supplier, and at the same time allowed for the functioning of this sector in competitive conditions on the global markets, was important for the gas sector. In his opinion, the Yamal contract, valid until 2022, made Poland dependant. Minister Małecki pointed out that the above conditions were the reason for the idea to build the LNG Terminal in Świnoujście, which, alongside the *Baltic Pipe*, was an element of the North Gate. The entire project will allow for the import of gas to Poland in competitive conditions. At the same time, it reduces the risk faced by Poland as a result of the construction of Nord Stream II. At that point, the speaker emphasised that the use of the third energy package for Russian and German investment would stop the construction of this pipeline as it is of political rather than business nature. As the next example of the imperfection of regulation and threats to energy security, Maciej Małecki presented the Decision of the European Commission of 22 October 2016, which in fact granted Russia unrestricted capacity of the OPAL gas pipeline. He also emphasised that pursuant to the Decision, it was possible to import gas to Poland from every direction, and yet the gas would always come from Russia. Therefore, the decision to build the North Gate was made. According to Minister Małecki, Poland's unrestricted connection with supplies of Russian gas would mean that the country was not sovereign on the international arena, but dependent on its neighbour. Reality shows that when business gas contracts are possible, there is no room for solidarity among the EU Member States. Maciej Małecki claimed that the amendments to the Security of Supply Directive, which puts a duty on EU Member States of mutual cooperation in case of an interruption in the supply of gas, which were introduced thanks to Poland's efforts, were a great success. To sum up, the speaker recognised that regulations were essential for the security of gas

supply. In his view, regulation should protect the State against fuel deficiencies, and, at the same time, favour the development of the necessary infrastructure. In his final conclusion, Maciej Małecki paid attention to improved internal energy security in the fuel sector, where a number of regulations limiting the black economy of the fuel trade were introduced in recent times. The benefits from these changes are significant not only for security but also for competition on this market, since they eliminate illegal entities from the market.

Piotr Woźniak stated that the construction of *Baltic Pipe* was a late project. The first attempt to end the monopoly in the imports of gas to Poland took place in 2001, when a contract for the supply of gas was signed with Norway. The contract included the construction of a pipeline between Poland and North Sea fields by the supplier – Norway wanted to directly sell its gas to Poland. Following the change of government, the contract was terminated in 2001. However, there were two attempts to re-build relations with Norway, but Poland had lost its reliability as a partner. Therefore, in 2006 Poland invested in Norwegian beds in order to rebuild its position – currently, PGNiG holds over 21 concessions to exploit gas in the North Sea. The *Baltic Pipe* is a project similar to the idea from 17 years ago. If completed in time, it will help eliminate the monopoly of Russian gas on the Polish market once the Yamal contract expires. Piotr Woźniak pointed out that we paid for gas supply regardless of the market situation, whereas the European market had changed significantly in recent years while Poland was stuck in the previous era (take or pay). He pointed at the margin squeeze and mentioned that it was difficult to engage in sales – pursuant to the Yamal contract Poland bought gas for an excessive price but sold it for the market price. P. Woźniak highlighted that this gap led to price pressure on the company. At this moment, PGNiG is waiting for the judgement of the arbitration court in Stockholm in relation to the clauses of the Yamal contract. A similar dispute between GAZPROM and NAFTOGAZ has already been resolved. However, the judgement in favour of the Ukrainian party has not been respected by GAZPROM. The Chairman of PGNiG said that the example of the Ukrainian and Russian dispute raised concerns that in Poland's case, a legal solution might not be enough and the current state of play would last until the expiration of the contract in 2022. Mr Woźniak clearly concluded that Russian gas had to be replaced with another volume and warned not to sign long-term contracts with GAZPROM in the future. He added that the *Baltic Pipe* would meet the Polish demand for gas and lead to a radical change on the Polish market – PGNiG would be able to purchase gas for the market price from Norway and import gas from the North Sea. In such a scenario, it is safe to say that the Polish market will catch up with other European markets. The new pipeline is good news for PGNiG S.A. as it will improve the company's competitiveness in Europe and increase other countries' interest in cooperation. In Mr Woźniak's opinion, such a state of play might result from guaranteed uninterrupted supply of gas to Poland ensured by the *Baltic Pipe* – disruptions in supplies can be caused only by technical breakdowns. According to P. Woźniak, the most important thing was the fact that the new pipeline would eliminate the risk related to gas supply for domestic purposes, which at the same time was a prerequisite for large-scale use of gas in energy production. Piotr Woźniak

added that PGNiG was intensively preparing for autumn 2022, when the construction of the pipeline was said to be finished. PGNiG is planning large-scale acquisitions on the North Sea. He added that the Norwegian gas portfolio was divided into two sections: own gas exploited based on the company's concession and gas purchased from other partners. Chairman Woźniak pointed out that the Yamal–Europe pipeline would still be used, but the gas would be supplied not based on long- or mid-term contracts as this would be too much of a risk to Polish interests.

The second panel of the Conference was devoted to the relation of energy security to the law and the economy. The session was moderated by Associate Professor Mr Mariusz Golecki (professor at WPiA UŁ). The first paper was given by Professor Mirosław Pawełczyk. He titled his address 'Energy security – opposite values'. The speaker discussed inconsistent and often differently understood relevance of energy security as well as its axiological meaning. In his opinion, energy security is evolutionarily situated on an equivalent level to constitutional principles. Professor Władysław Mielczarski (professor at the Institute of Electrical Power Engineering of the Lodz University of Technology) spoke next on 'The influence of regulation and competition on energy security'. W. Mielczarski pointed out that the market of electric energy had lost the features of a market system and became a 'race' for raising subsidies by its participants. In his opinion, benefits from the introduction of competition to the energy market were very small, however transaction costs related to the maintenance of other subsidies – systems of their allocation and settlement – increased significantly. Professor Mielczarski also referred to the dilemma: was a not particularly efficient system of central management in the energy industry more effective than the market system subjected to manipulations throughout subsidy systems. Zdzisław Muras, PhD gave the third paper (the Head of the Department of Legal Issues and Disputes Settlement of the Energy Regulatory Office) entitled 'Energy security and the control policy in the context of judicial inspection of the decisions made by the market regulator. The role of administration and judicatures'. In the address, he emphasised that the possibility of challenging decisions of regulatory bodies constituted the basic component of the legal democratic State as well as guaranteed the defence of self-interests. Later in his address, the speaker analysed the appeal mode from the decision of the President of Energy Regulatory Office and the role of civil courts in the control of these decisions. He based his speech on broad examples from case law. In the conclusions, Z. Muras emphasised that settlement of cases related to the scope of sectorial regulation should take into consideration the shape and guidelines determined by the national policy, the regulatory policy based on it, as well as the fact that the obligation to take these elements into account did not belong to the area of the jurisdictional activity of civil courts. The last speaker – Professor Michał Domagała (assistant professor at the Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin) introduced his paper titled 'Cooperation of electricity undertakings – condition for energy security'. In this paper, the speaker addressed the issues of regulatory implementations of the obligations imposed on non-public entities in the field of energy security. He described the subjective and objective scope of the obligation of economic cooperation between electricity undertakings in the context of the achievement of

energy security. Mr Domagała emphasised that the aforementioned obligation went beyond the duty of contracting only – it also included an active involvement in the realisation of the public interest.

In the afternoon part, two complex sessions were held with three parallel panels. The first session contained panels on ‘The Polish capacity market’, ‘Renewable energy sources’, and ‘Functioning of electricity undertakings’; the second session contained panels on: ‘Electromobility’; ‘Environmental protection in the energy sector’; and ‘Consumer protection’.

The panel ‘The Polish capacity market’ was moderated by Professor Mirosław Pawełczyk. Mr Tomasz Dąbrowski (Director of the Department of Energy at the Ministry of the Energy) was the first to speak. In the introduction, he noted one of the main causes that determined the implementation of activities aimed at the adoption of regulation of the Polish capacity market – the constantly growing demand for power in the National Power System, which is connected with economic growth of the country and the development of new technologies. Next, the speaker presented the purpose of the new regulation – ensuring the safety of electricity supplies to final customers in the medium- and long-term perspective through investments in new manufacturing powers and the modernisation of existing power stations as well as combined heat and power stations, so as they would not be withdrawn for rational economic reasons. In his speech, Mr Dąbrowski also referred to the operational principles of the capacity markets in other European countries. An essential part of Mr Dąbrowski’s paper was to show the rules for the participation of foreign entities in the Polish capacity market and the certification process. The speaker also pointed out that the Polish capacity market would help guarantee competition on the energy market as well as technological neutrality and would also help avoid excessive support of individual market participants.

The next paper – ‘The Polish capacity market as the support instrument for the construction of new power plants. Will it work?’ – was delivered by Mr Igor Muszyński (Radzikowski, Szubielska and Partners LLP). He analysed solutions included in the regulation of the capacity market that support the construction of new power plants. He paid attention to the significance of the capacity market, which leads to a change in cash flows in the electricity sector. He also touched upon the themes associated with the execution of tasks faced by an investor reporting its participation in an auction. Mr Muszyński paid attention to the resistance of the power market to external changes, shown by the stiff character of power agreements, and a lack of possibility of amending its provisions, excluding two exceptions to this principle. At the end of his address, he mentioned the legally increased stock exchange duty to sell electric energy set at 30%. He also emphasised the importance of new regulations for the development of the electricity sector, necessary to create a system which supports investments in new manufacturing powers.

The third paper ‘The capacity market – general certification and certification for main auctions (practical problems and first conclusions)’ was presented by Michał Będkowski-Kozioł PhD LL.M. Eur.Int. (Dresden) (Cardinal Stefan Wyszyński University in Warsaw). In his address, he paid attention to the processes of general

certification, as well as certification for main and additional auctions. Moreover, he highlighted existing problems in the certification process. The speaker analysed the situation of market participants, putting emphasis on their rights and duties in individual phases of certification. He also made a preliminary assessment of the ongoing general certification process, underlining its importance in allowing participants to be involved in the market. Mr Będkowski-Koziół explained individual stages of the certification process and pointed at the interrelationships between individual kinds of certification. In the end, he described the deadlines and datasets required to submit an application.

Next to speak were Marcin Kraśniewski, MA (WPiA UŁ) and Michał Bałdowski, MA (WPiA UW). They considered the secondary market as the tool providing the effectiveness for the mechanism of the capacity market. In the first part, they described the nature of the secondary market. They showed that the secondary market performs a protecting function for the supply of required capacity, also if an obliged entity fails to deliver the capacity in the appropriate amount. Moreover, they pointed at the existence of a second crucial function – namely making the capacity market mechanism more flexible, because the secondary market allows for the supply of capacity by entities which did not win the auction, but participated in the certification process in relation to the same auction. Later on, the speakers addressed the two types of transaction: secondary trade in the capacity obligation and reallocation of the volume. The next section of the paper was devoted to British legal solutions determining the operational principles of the secondary market for the capacity market in Great Britain. The speakers praised both solutions. To conclude, they compared the regulation of the secondary market in both countries.

The last address presented by Paweł Ura (WPiA UW) concerned the participation of foreign producers in the Polish capacity market. First, the speaker indicated the general legal framework of the European Union, referring to the directive for the electricity sector, pointing at the efforts to achieve a uniform and competitive market, preserving equal chances for its participants. Next, he discussed the obligation to admit foreign producers to participate in the Polish capacity market. In his statement, the speaker also presented the manner of participation of foreign entities in the auction system, emphasising preliminary auctions. In conclusion, Paweł Ura paid attention to the possibility of a discrepancy between EU law and domestic law due to the planned implementation of the Winter Package.

The panel discussion about renewable energy sources was hosted by Professor Maria Królikowska-Olczak. Speaker included: Magdalena Porzeżyńska, PhD (WPiA UW), Mariusz Szyrski, PhD (Cardinal Stefan Wyszyński University in Warsaw), Marcin Trupkiewicz, MA (Adam Mickiewicz University in Poznań), Michał Krzykowski, PhD (University of Warmia and Mazury), Artur Leśniak (Jagiellonian University) and Anna Żyła.

Magdalena Porzeżyńska titled her address ‘The analysis of selected support systems for energy production from renewable sources in the light of EU rules on State aid’. The purpose of the paper was to show that domestic energy markets are not able to assure a desirable production level of renewable energy, thus Member States have to use instruments supporting this market. She began the address by discussing

the guidelines of Directive 2009/28/EC, paying special attention to the freedom of EU Member States in its implementation. Furthermore, she stated that correct categorisation of the support system as State aid was essential. She also showed that the decision-making practice of the European Commission and the judicial decisions of the Court of Justice of the European Union in this respect confirm that in the process of designing and implementing of the support systems, the need to ensure their compliance with the rules of State aid is problematic in many Member States.

Mr Mariusz Szyrski spoke next addressing the subject of local power industry as the latest trend in Polish and European law. To begin with, he showed that it was possible to view 2016-2017 as a breakthrough in the development of the concept of the issue he brought up at the level of EU legislation. In the very period, the European Union and its Member States noticed that local energy communities exploiting the energy from renewable sources should play a fundamental role in the development of the new energy policy. The speaker noticed that a possibility of creating and functioning of such structures like energy clusters, energy cooperatives, or other local energy associations had been predicted within the local energy community. In conclusion, he stressed the unexpected growth in the production of energy by natural persons in Poland, which has been hampered in recent times due to a delayed amendment to the Act on RES.

Marcin Trupkiewicz, MA gave a speech on 'New shape of support instruments in the draft amendment to the Act on RES'. To begin with, he stated that the basic goal of the government draft act on the amendment to the Act on RES was to ensure compliance with EU principles on State aid. Poland committed itself to this goal in the notification procedure related to the Polish support system for the development of RES. Next, he showed the recipients of the new regulations, that is, producers of hydro power and biogas, including agricultural biogas. M. Trupkiewicz discussed the provisions of the draft Act on RES which constitute two new sales models of unused energy. These models are a feed-in tariff – the producer signs a contract for sale of unused energy for a fixed purchase price with the obliged seller – and feed-in premium – the purchase price of electric energy available on a competitive market is levelled to a guaranteed fixed price.

In the paper 'The new shape of support instruments in the draft amendment to the Act on RES' Michał Krzykowski, PhD presented a thesis that in order to meet the challenges resulting from growing global population and quick depletion of natural resources, the changing climate and the need to pay more attention to the environment, the European Union will radically change its approach towards productions, consumption, processing and storage of recycled goods and neutralisation of biological waste. Furthermore, he presented proposals for the implementation of the aforementioned thesis – moving towards circular economy, which helps to maintain the resources in the economy as long as possible and to reduce waste production to the minimum. In the paper, he suggested, among others things, to develop ISO standards, quota systems as well as biolabels.

Anna Żyła spoke next of the financing rules for RES projects by the banking industry. Anna Żyła presented a practical look at financing of RES investments and

broadly understood environmental protection. In her paper, she justified why the law, the economy and engineering should be part of a consistent whole for investment projects. She emphasised that the support system for investments was undergoing constant developments and helped to fund complex and innovative projects. However, she added that every investment was approached individually. In the final part of her speech, Anna Żyła discussed the rules for the provision of investments carried out by special purpose vehicles and prosumers.

Artur Leśniak presented a paper concerning legal obstacles for the development of RES in Poland. As the first barrier, he identified ineffective support. A. Leśniak regarded low social awareness as the next barrier which in his opinion influenced the adoption of the so-called anti-wind power plant act. He claimed that the involvement of the social factor in the administrative decision-making process was cumbersome and slowed down the investment process. Excessive bureaucratisation, present in the process of connecting RES installations to the network, was regarded as a next barrier. The speaker emphasised that the five-stage process of connecting was excessively complicated and the documents necessary in the course of its implementation required extensive expertise. This, often combined with little experience of the investor, significantly extends procedures.

The first panel, entitled 'The functioning of energy companies' and led by Professor Mariola Lemonnier (University of Warmia and Mazury), was opened by a speech delivered by Michał Karpiński, MA (University of Silesia in Katowice) on 'Regulation for security – the situation of energy companies on selected examples'. In his speech, he discussed the limitations related to the operation of energy companies in order to protect the legitimate public interest, that is, energy security. He also emphasised that any restrictions on economic freedom should be exceptional. The next speech, entitled 'Investments in wind energy – evaluation of the current state in light of Polish and EU regulations', was given by Dominika Basik (Cardinal Stefan Wyszyński University in Warsaw). She presented the current state of investments in wind energy and discussed the regulatory environment having key impact on the volume of these investments. She also noted that it was necessary to introduce legal changes that would foster investments in wind farms. The third paper, entitled 'Energy market as the addressee of financial regulations', was delivered by attorney Łukasz Jankowski (Kancelaria Wierzbowski Eversheds Sutherland Sp. K.), who presented the impact of financial sector regulation on the energy sector. Among other things, he spoke in detail of the sanctions for a violation of MiFID II provisions in the form of fines. He pointed out that those penalties were to eliminate expected potential benefits for entities and to act as a deterrent. The next speech on interim settlements in cases concerning the operation of energy enterprises in Poland was presented by attorney Konrad Zawodziński (District Bar Council in Warsaw). The speaker discussed here the nature of interim settlements based on the subject-related framework of energy companies, public administration bodies and judicial power. In the further part of his speech, he drew attention to the low popularity of those types of decisions and the disproportion between the competences of the office of competition and consumer protection and the sector regulator in the sphere of interim settlements. The last

paper, titled 'An attempt to evaluate selected commitments proposed by GAZPROM in antitrust proceedings from a market perspective', was delivered by Marcin Kamiński (University of Warsaw). He analysed the anti-trust proceedings against GAZPROM. He paid particular attention to the commitments that were proposed by this company. He also stressed that the current way of conducting antitrust proceedings would not lead to the compensation of damages.

The electromobility panel was chaired by Professor Mirosław Pawełczyk. The first paper, concerning the adoption of the new Act on Electromobility, was delivered by Adam Szafrąński, D. Sc. (University of Warsaw). In his speech, he stressed the existence of an irreversible phenomenon of economic progress, to which the implemented regulations were usually the answer. However, he noted that the case of electromobility was slightly different due to a relatively low number of electric vehicles in Poland, pointing at the reasons for this phenomenon, that is, a maximum reach of 500 km and the price on average twice as high as in the case of combustion cars. Professor Szafrąński pointed out that despite those conditions, on which the legislators had no influence, there were areas where the State had a chance to show support for the development of the electric vehicle market, by, for instance, introducing appropriate legal instruments allowing for the construction of a generally accessible charging station and defining the rights and responsibilities of individual participants of that market. An important part of the paper was the analysis of the rules for the building of a charging station, including the importance of construction law for this process. Professor Adam Szafrąński also talked about privileges for the owners of electric vehicles provided for in the Act (such as clean transport, free parking, tax reliefs).

The next paper addressed the assumptions of the programme for zero-emission public transport (E-mobility) and was given by attorney Nina Zys (the National Centre for Research and Development). The speech began with an indication of the initiating factor to start work on the programme – the implementation of a new financing method of research, based on the problem-driven research model in the area of electromobility, by the National Centre for Research and Development. The new system assumes the creation of comprehensive research programmes from the portfolio of projects contributing to the main purpose of the E-mobility Programme. She pointed out that the new financing rules were aimed at solving existing problems and satisfying the needs of recipients by means of projects involving coherent technological solutions. In the further part of the lecture, N. Zys presented the main assumptions of the E-mobility programme based on American research programmes.

Michał Markiewicz, PhD (the National Centre for Research and Development) was the next speaker in the 'Electromobility' panel. He focused on the potential risk involved in the implementation of the programme of zero-emission public transport in the form of an innovation partnership. He began his considerations by discussing the principles of an innovation partnership. Afterwards, he discussed the implementation of projects under an innovation partnership on the example of the E-mobility project. The aim of the project is to create a new, emission-free public transport vehicle that will be introduced onto the Polish market and the development of charging station infrastructure. The essence of M. Markiewicz's speech was the indication of the risks

associated with the implementation of projects under an innovation partnership (process risk, procedural risk, technological risk).

The last speech, delivered by Patrycja Gliwka (University of Warsaw), addressed the advantages and disadvantages of the solutions adopted in the Act on Electromobility and Alternative Fuels. She started by discussing legislative work and their pace. She pointed at the rush in these changes, related to financial penalties for the failure to implement Directive 2014/94/EU on the deployment of alternative fuels infrastructure. Subsequently, she raised the issues of generally accessible charging points and its concessions for the distribution of electricity. She noted that it was not required to have a license to supply electricity to public charging stations. Such concessions are required to build charging stations which, together with the regulations imposing additional duties related to the creation of charging stations, may lead to the construction of a limited number of such stations.

At the same time, the panel on environmental protection in the energy sector was held with Anna Zyla as its moderator. Maciej Kojro (Cardinal Stefan Wyszyński University in Warsaw) was the first speaker of this session delivering a speech on 'The impact of the MCP Directive on the heating sector'. In the paper, he analysed problematic issues for its application and the implementation process in Poland. In the opinion of the speaker, the system created by the Medium Combustion Plan Directive and the Industrial Emissions Directive (hereinafter; IED) was a coherent whole. He believed that the inclusion of emission standards for small and medium-sized sources was the implementation of the EU programme 'Clean Air for Europe'. As a conclusion of his speech, M. Kojro positively assessed the shape of EU regulation.

Jędrzej Mańnicki, MA (University of Warsaw) presented a paper entitled 'The impact of environmental regulations on ensuring equal conditions of competition in the energy sector'. He put emphasis on the economic aspect of EU environmental regulations in the energy sector. He stated that the harmonisation of environmental protection rules was important from the economic point of view. Among EU regulations which significantly affect the economy, he included standards on industrial emissions, integrated emissions of exhaust gases into the atmosphere and emission control systems. In the paper, J. Mańnicki paid much attention to the IED and the Best Available Technology (hereinafter: BAT) conclusions. Among other things, he mentioned the lack of research on the impact of the BAT and IED conclusions on the activities of the energy sectors of the Member States. He also pointed out that the adaptation of national energy systems to BAT conclusions was an expensive process and, thus, required special attention. He criticised the process of establishing and applying EU law, which justified the failure to include strictly technical aspects of the energy sector in those processes. In the summary, he stated that the main goal of environmental regulations was to ensure a level playing field and also that environmental policy was an important element of the European Union's economic policy.

The issues of the IED and the BAT conclusions were further discussed in the next paper, delivered by attorney Radosław Maruszkin. He characterised the objects subject to regulations of the IED and discussed the divisions of large stationary combustion sources and the types of pollution emitted by those objects. In the summary,

R. Maruszkin considered a four-year period to adapt to the BAT conclusions to be far too short, which justified the existence of an extensive decision-making process in corporate administrative matters.

The following paper – prepared by Karolina Chról (Cardinal Stefan Wyszyński University in Warsaw) – was related to the Directive on the geological storage of CO₂ (hereinafter; CCS Directive). The author pointed out that the Directive did not gain popularity among the Member States. In her opinion, the implementation of the provisions of the CCS Directive and, thus, the creation of carbon dioxide storage sites in Poland, created an opportunity for the development of national economies. She stated that such obligations as long-term landfill inspections and examinations of carbon dioxide composition were crucial for environmental safety and environmental protection.

Lastly, Adrian Król (University of Warsaw) presented a paper on new support systems for high-efficiency cogeneration in Poland. In the first part of the speech, he distinguished two perspectives for the development of this system. In his opinion, the first period was of a regulatory nature (the Energy Efficiency Directive), while the second was characterised by State aid for the congregation support system. He paid particular attention to discussing EU guidelines on the application of State support. In his opinion, they primarily promoted systems consisting of a supplement to the market price.

The panel on ‘Consumer protection in the energy sector’ was led by Rafał Zgorzelski, PhD. The first speech, entitled ‘Connection agreements in the heating sector – aspects of competition and consumer law’, was given by Jarosław Sroczyński (Kancelaria Markiewicz & Sroczyński Sp. K.). He discussed practical aspects of connection agreements. He said that divergent targets of heating companies and heat consumers often led to disputes. In his opinion, this state of affairs led to the need to pay special attention to consumer protection in the heating sector. Attorney Sroczyński pointed to the need to analyse whether, and to what extent, the investor’s obligations could be transferred to entities that own apartments or houses. He further mentioned that case law showed that the ‘community’ and the ‘cooperative’ constituted consumer groups within the meaning of the Act on Competition and Consumer Protection. As such, they were therefore protected by the President of the Office of Competition and Consumer Protection. The next paper, titled ‘Protection of consumer interests in light of the Winter Package and the new order for consumers’, was delivered by the co-organiser of the Conference – Marzena Czarnecka, PhD. In the introduction, she stressed that should protection of consumers be necessary, it had to be provided via the energy market through such measures as solidarity rates or reduction of energy bills. Subsequently, the speaker presented legal perspectives for consumers in the light of changing European Union law – the ‘Winter Package’ – and the European Union Communication on Delivering a New Deal for Energy Consumers. As emphasised by M. Czarnecka, a fully integrated internal energy market should bring tangible benefits to consumers, and the new order would contribute to the removal of unnecessary burdens for enterprises. The next speech, delivered by Paweł Domagała, MA (Cardinal Stefan Wyszyński University in Warsaw), was entitled

‘Threats related to the conclusion of off-premises and distance contracts for the supply of electricity’. At the beginning of his speech, the speaker pointed out that the conclusion of off-premises contracts with consumers caused many abuses by dishonest suppliers, often resulting from the activities of unreliable agents of energy companies. Subsequently, the speaker presented the postulate of the President of the Energy Regulatory Office regarding the introduction of a ban on contracts for the supply of electricity outside the premises of an energy company. In the summary of his speech, M. Domagła presented legal perspectives on the use of off-premises and distance contracts. The last speech, entitled ‘The actions of the Office of Competition and Consumer Protection in the field of consumer protection on the electricity market’, was delivered by the Director of the Delegation of the Office of Competition and Consumer Protection in Łódź, Tomasz Dec. The paper presented the achievements of the Office of Competition and Consumer Protection in the scope of consumer protection in the electricity sector. The speaker stated that an increase in the market position of energy production and the trade in that energy, as well as the resulting increase in energy prices, had been noticeable in recent years. He also pointed at the upward trend in the process of changing the seller. Mr Dec noted that the authorities were not fully prepared for the ongoing liberalisation of the energy market and agreed with the view of the previous speakers that the allocation of additional competences to authorities could help to improve the legal situation of consumers.

The conference was summed up by Professor Maria Królikowska-Olczak who drew attention to the multifaceted nature of the subject matter and its practical meaning for many entities in the energy sector, including consumers. She claimed that the goals set by the organisers of the Conference were fully accomplished. She expressed hope that the deliberated considerations would be continued during subsequent meetings of the representatives of science, State and local government administration as well as the energy sector. Afterwards, Professor M. Królikowska-Olczak expressed her gratitude to Professor Mirosław Pawełczyk, Marzena Czarnecka, PhD and Marcin Kraśniewski, MA for their joint substantive and organisational work at the Conference. She also sent her thanks to the representatives of the conference partners. Special words of gratitude for the organisational and financial support provided by the Polish gas company PGNiG S.A. were extended to Daniel Wais (Director of the Management Department of the PGNiG Capital Group).

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