

# REGULATORY CONTROL OVER THE ELECTRICITY MARKET IN UKRAINE: THE PROBLEM OF DUPLICATION OF POWERS

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**Annotation.** The purpose of this article is to substantiate the existence of the problem of duplication of powers in the system of regulatory control over the electricity market in Ukraine and to determine ways to solve it. This research task should be carried out using, first of all, the formal-dogmatic method within the framework of a critical assessment of the relevant legislative provisions, perceiving them being detached from the environment of their application, as well as relying on the method of legal and institutional modeling to outline the organizational and legal contours of the system of regulatory control over the electricity market in Ukraine. Results: the subject matter of regulatory control (supervision) over the electric power industry carried out by the State Energy Supervision Inspectorate of Ukraine covers the production, transmission, distribution of electric energy, energy storage, as well as the use of energy for their own needs by market participants in part of technical operation of power plants and networks, energy equipment, testing and repair of power plants and networks, performance of works on the design of power plants and networks, while the National Energy and Public Utilities Regulatory Commission carries out regulatory control over compliance by economic entities carrying out activities in the fields of energy with legislation in this area as well as with the licensing conditions by conducting scheduled and unscheduled on-site, as well as off-site inspections in accordance with the control procedures approved by this commission. Conclusions: the optimal institutional reform designed to ensure the exclusivity and indivisibility of powers regarding regulatory supervision (control) over the electric power market appears to be the concentration of these powers in the field of competence of the National Energy and Public Utilities Regulatory Commission as an independent market regulator with a complete and self-sufficient complex of control and supervision measures, which can be enriched with the prepared proposals on reforming the procedures of activity of the State Energy Supervision Inspectorate of Ukraine.

**Key words:** duplication of powers, market regulator, National Energy and Public Utilities Regulatory Commission of Ukraine, electric energy designated supervision authority, regulatory control over the electricity market.

## 1. Introduction.

Measures of regulatory energy control (supervision) in their broadest sense are one of the fundamental constituent elements of the mechanism of government regulation in the field of electricity, which is designed to ensure compliance with the principles and rules of the functioning of the market of production and circulation of electric energy. For this purpose, a specialized market regulator or other authorized state body is empowered to monitor compliance by participants in the electric energy market in the course of their economic activity with requirements for the design, technical operation and repair of electrical installations, networks and energy equipment, protection of consumer rights and ensuring the protection of other national interests in in the field of electric power with the subsequent adoption of response measures for unjustified long-term power outages, unsatisfactory technical condition of electrical network equipment, deviation of the quality of electric energy from state standards and other violations of the requirements of regulatory acts in the field of electric power. Taking into account the importance of effective state energy control (supervision) for the sustainable

development of society and the complexity of its implementation due to a complex of multifaceted economic and technical factors, its organizational model and legal tools should, to the greatest extent possible, correspond to the most progressive principles of state regulatory policy and state supervision (control) in sphere of economic activity. However, the legislative analysis and review of the proposed changes to the provisions of the legislation of Ukraine, which regulates state control and supervision activities in the field of electricity, shows that they deviate from the principle of exclusive powers of one state supervision (control) body in relation to one parameter of the activity of a controlled entity.

## **2. Analysis of scientific publications**

Scientific literature and analytical publications of electric power industry experts show that significant attention is paid to the issues of organization, powers and the procedure of the state energy control (supervision) bodies, which is confirmed, in particular, by the wide-ranging and significant in-depth research works of V. Tsependa [1]. However, they, along with other scientific provisions and recommendations on this topic, need to be updated in the light of introduced and proposed legislative innovations, and they should also be supplemented with considerations regarding the correct distribution of control powers in the market of production and circulation of electric energy from the point of their concentration, dispersion and duplication in light of the principles of state supervision (control) in the field of economic activity.

## **3. The purpose of the work.**

The purpose of this article is to substantiate the existence of the problem of duplication of powers in the system of regulatory control over the electricity market in Ukraine and to determine ways to solve it. This research task should be carried out using, first of all, the formal-dogmatic method within the framework of a critical assessment of the relevant legislative provisions, perceiving them being detached from the environment of their application, as well as relying on the method of legal and institutional modeling to outline the organizational and legal contours of the system of regulatory control over the electricity market in Ukraine.

## **4. Review and discussion.**

Starting the research, attention is to be paid to the fact that according to the content of the provisions of Art. 3 of the Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Field of Economic Activity”, state supervision (control) is carried out, in particular, according to the principle of inadmissibility of duplicating the powers of state supervision (control) bodies and the inadmissibility of state supervision (control) measures by different state supervision bodies (control) on the same issue. It is additionally emphasized that the implementation of state supervision (control) measures by different bodies of state supervision (control) on the same issue is prohibited (Part 2 of Article 4 of the Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Field of Economic Activity”) [2].

However, after examining the special legislative provisions related to state energy control (supervision), it is possible to ascertain the presence of signs of unjustified dispersion and duplication of powers of control (supervision) bodies in this area.

According to the provisions of Article 9 (1) of the Law of Ukraine ‘On the Electric Energy Market’ state supervision (control) in the electric power industry shall be carried out by the central executive authority implementing the state policy in the sphere of supervision (control) in the electric power industry (State Energy Supervision Inspectorate of Ukraine), activity of which is directed and coordinated by the Cabinet of Ministers of Ukraine through the minister in charge in accordance with the law. Economic activity connected with the electricity generation, transmission and distribution as well as using energy by the market participants (other than the consumers) for their own needs in terms of technical operation of power plants and electrical grids, power equipment, testing and maintenance of electrical installations and grids as well as carrying out works on designing electrical installations and grids shall be the subject

of the energy supervision in the electric power industry (Article 9 (2) of the Law of Ukraine 'On the Electric Energy Market'). Carrying out appropriate surveys, inspections and revisions regarding the electrical grids equipment of the market participants (other than the consumers) by the central executive authority implementing the state policy in the sphere of supervision (control) in the electric power industry according to the procedure envisaged by the Law of Ukraine On Basic Principles of the State Supervision (Control) in the Sphere of Economic Activity shall be the way to carry out the state supervision (control) in the electric power industry (Article 9 (3) of the Law of Ukraine 'On the Electric Energy Market') [3].

A similar subject of state energy control is expected to be assigned to the State Energy Supervision Inspection of Ukraine in accordance with the draft law of Ukraine "On State Energy Control" of 11 January 2024. In particular, according to the provisions of this draft law, the state energy control (supervision) body has the right, in particular, to carry out:

- documentary inspections in the fields of electric power for the purpose of identifying and eliminating violations, monitoring the timeliness, reliability, completeness of work (measures) on the technical condition of energy facilities and networks, energy equipment, their organization, operation and maintenance - based on the results of the inspection in case in the presence of violations of the requirements of the legislation on the technical condition of energy facilities and networks, energy equipment, their organization, operation and maintenance, a certificate is drawn up, on the basis of which a decision is made to grant approval for an unscheduled measure of state energy control (Article 17 of the draft law of Ukraine "On State Energy Control" of 11 January 2024);
- technical audit at the request of the subject under control, in the framework of which a systematic analysis of the technical condition and organization of the operation of the objects of subjects under control is carried out in order to identify, prevent and eliminate violations of the requirements of legislation in the field of supervision (control) in the power industry - based on the results technical audit, the state energy control (supervision) body provides proposals for eliminating these violations or an act, the issuance of which increases the periodicity of the implementation of planned measures of state energy control (supervision) of such an entity by 1.5 times (Article 18 of the draft law of Ukraine "On State Energy Control" of 11 January 2024);
- state monitoring of the activities of controlled subjects (including the implementation of measures provided for by acts of technological investigations) in the power industry in terms of the technical condition of controlled objects, their operation and maintenance, ensuring the energy security of the state and reliable, safe and uninterrupted supply of electric energy consumers - based on the results, a generalized report is formed (Article 19 of the draft law of Ukraine "On State Energy Control" of 11 January 2024) [4].

Simultaneously with the State Energy Supervision Inspectorate of Ukraine, the National Energy and Public Utilities Regulatory Commission, is given broad control powers in the field of electricity.

This commission, as a market regulator, carries out state control over compliance by business entities operating in the energy sector with legislation in this area and license conditions by conducting scheduled and unscheduled on-site and off-site inspections in accordance with the control procedures approved by it (Article 19 (1) of the Law of Ukraine 'On the National Energy and Public Utilities Regulatory Commission'). In addition, the law stipulates that the regulator monitors the functioning of energy markets, which is ensured by conducting analysis and evaluation, in particular:

- fulfillment by economic entities operating on the markets in the fields of energy and communal services of their obligations in accordance with the legislation;
- state of security of energy supply and uninterrupted operation of infrastructure;
- compliance with requirements regarding the reliability and uninterrupted power supply, standards and requirements for the quality of consumer service;
- performance by operators of transmission and distribution systems of their functions and obligations in accordance with legislation;



- compliance with congestion management rules, including rules for the distribution of capacity of electric (gas) interstate networks/intersections;
- time periods required by operators of transmission and distribution systems to perform connection and repair works;
- timeliness of the publicizing by operators of electric energy and natural gas transmission systems of information on intersystem connections, the distribution of the throughput capacity of such connections;
- application of conditions for joining the networks of new generating capacities and/or energy storage facilities with due consideration of costs and benefits associated with various technologies in the use of renewable energy sources, as well as with distributed generation and combined production of heat and electricity (cogeneration) ;
- compliance by licensees with license conditions, including regarding cross-border issues;
- technical cooperation with transmission system operators and/or market operators of other contracting parties to the Treaty on the Establishment of the Energy Community (Article 20 (1) of the Law of Ukraine 'On the National Energy and Public Utilities Regulatory Commission') [5].

## 5. Conclusions.

Bearing in mind the afore-mentioned observations, the subject matter of regulatory control (supervision) over the electric power industry carried out by the State Energy Supervision Inspectorate of Ukraine covers the production, transmission, distribution of electric energy, energy storage, as well as the use of energy for their own needs by market participants in part of technical operation of power plants and networks, energy equipment, testing and repair of power plants and networks, performance of works on the design of power plants and networks, while the National Energy and Public Utilities Regulatory Commission carries out regulatory control over compliance by economic entities carrying out activities in the fields of energy with legislation in this area as well as with the licensing conditions by conducting scheduled and unscheduled on-site, as well as off-site inspections in accordance with the control procedures approved by this commission. To a large extent, the range of issues for which state monitoring of the activities electric energy market participants is carried out coincides, because, for example, the National Energy and Public Utilities Regulatory Commission, as well as the State Energy Supervision Inspectorate of Ukraine, in particular, carry out analysis and assessment the state of security of energy supply and uninterrupted operation of infrastructure, compliance with requirements for reliability and uninterrupted power supply, standards and requirements for the quality of consumer service. In light of this, the optimal institutional reform designed to ensure the exclusivity and indivisibility of powers regarding regulatory supervision (control) over the electric power market appears to be the concentration of these powers in the field of competence of the National Energy and Public Utilities Regulatory Commission as an independent market regulator with a complete and self-sufficient complex of control and supervision measures, which can be enriched with the prepared proposals on reforming the procedures of activity of the State Energy Supervision Inspectorate of Ukraine.

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