

# PECULIARITIES OF THE LEGISLATION REGARDING THE ACTIVITIES OF THE NATIONAL COMMISSION, WHICH CARRIES OUT STATE REGULATION IN THE SPHERES OF ENERGY AND COMMUNAL SERVICES

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**Annotation.** The article analyzes the state and problems of state regulation in the field of energy.

It is established that the state carries out regulation in the field of energy and communal services through the National Commission, which carries out state regulation in the spheres of energy and communal services.

It was determined that the purpose of the activity of the National Commission, which carries out state regulation in the spheres of energy and communal services, is to achieve a balance of interests of consumers, business entities operating in the sphere of energy and communal services, and the state, ensuring energy security, European integration of electricity markets energy and natural gas of Ukraine.

The legislation on the National Commission, which carries out state regulation in the spheres of energy and communal services, has been analyzed.

Peculiarities of legal regulation of National Commissions, Regulators in the countries of the European Union have been studied.

A comparison of domestic and foreign legislation is carried out.

It is claimed that in the conditions of the European integration processes in Ukraine, an important task of the state is the adaptation of domestic legislation to the legislation of the European Union in the field of energy. The implementation of Directive 2009/72/EC on common rules of the internal electricity market and repealing Directive 2003/54/EC, Regulation (EC) 714/2009 on conditions of access to the cross-border electricity exchange network and repealing Regulation (EU) remains an important task in this area ) 1228/2003, Directive 2005/89/EU on measures to ensure the safety of investments in the electricity supply system and infrastructure, Regulation of the European Parliament and Council (EU) No. 1227/2011 of 10/25/2011 on integrity and transparency in the wholesale energy market and decisions Council of Ministers of the Energy Community. As well as fulfilling obligations under the Association Agreement between Ukraine and the European Union.

It was concluded that an important direction of improving the legislation regarding the activities of the National Commission, which carries out state regulation in the fields of energy and communal services, is compliance with the principle of justice, balancing the interests of consumers and business entities in the field of energy, and autonomy and independence within the limits defined by law.

**Key words:** state regulation, energy, National Commission, legislation, EU legislation, European integration.

## 1. Introduction.

The dynamic development of relations between business entities on the electricity market in Ukraine, caused by the conclusion of the Association Agreement between Ukraine and the European Union, makes it necessary to study and improve the limits and means of legal regulation in the field of energy.

## 2. Analysis of scientific publications.

They devoted their works to the study of issues of legal regulation V.B. Averyanova, O.F. Andriyko, Yu.P. Bytyaka, V.M. Harashchuka, T.O. Kolomoets, D.V. Zadyhaylo, O.E. Korystina, D.V. Acceptance However, the specifics of legal regulation in the field of energy require a separate study.

**3. The aim of the work** consists in highlighting the peculiarities of state regulation by the National Commission that carries out state regulation in the spheres of energy and communal services and developing proposals for its improvement.

## 4. Review and discussion.

State regulation in the spheres of energy and communal services in Ukraine is carried out by the National Commission (NKREKP, Regulator). The legal status of the NCRECP, its tasks, functions, powers and the procedure for their implementation are determined by the Law of Ukraine "On the National Commission, which carries out state regulation in the spheres of energy and communal services".

Art. 6 of the Law of Ukraine "On the Electric Energy Market" specifies that State regulation of the electric energy market is carried out by the Regulator within the scope of powers defined by this Law and other legislative acts [1].

In accordance with Article 1 of the specified law, the NCRECP, which carries out state regulation in the spheres of energy and communal services, is a permanent central body of executive power with a special status, which is formed by the Cabinet of Ministers of Ukraine. The specifics of the special status of the Regulator are determined by its tasks and powers and are determined by this law and other legislative acts and consist, in particular, in the peculiarities of the organization and procedure of the Regulator's activities, in the special procedure for appointing the members of the Regulator and terminating their powers, in the special procedural principles of the Regulator's activity and guarantees of independence in his decision-making within the limits of the powers defined by law, establishing the terms of payment of the members and employees of the Regulator [2].

The relevant body is collegial and carries out state regulation, monitoring and control over the activities of business entities in the fields of energy and communal services.

Yes, O.F. Skakun proposes to consider legal regulation as the ordering of social relations, as well as their legal consolidation, protection and development, which is carried out by the state with the help of legal norms and a set of legal means [3].

Instead, G.O. Samilo notes that legal regulation is defined not as the influence of the state, but as the influence of rights on social relations. Such influence is exercised through special legal means, the dominant place among which is occupied by legal norms [4].

The definition of the concept of legal regulation is given by M.I. Kozyubra, as regulating the behavior of participants in social relations with the help of special legal means and methods [10].

S.D. Husareva and O.D. Tikhomirov indicate that the influence of law on social relations is purposeful and effective. The purpose of such influence is not only order, but also improvement of specific social relations [5].

The purpose of the Regulator's activities is to achieve a balance of interests of consumers, business entities operating in the field of energy and communal services, and the state, ensuring energy security, European integration of the electricity and natural gas markets of Ukraine.

One of the main principles of the Regulator's activity is legality and autonomy and independence within the limits defined by law.

In connection with this, it can be concluded that the activity of the Regulator to implement the principle of legality while ensuring the balance of interests of consumers, business entities conducting activities in the energy sector should be based on the principles of autonomy and independence.

About D.O. notes that to ensure the energy security of Ukraine through the development of the field of alternative energy; consideration in administrative and legal regulation of international requirements and standards, international cooperation; combining direct and indirect methods of administrative-legal regulation of relations in the field of use, the principle of the determining role in administrative-legal regulation of relations belongs to the executive authority with a special status [13].

It is necessary to consider the fulfillment of these requirements by the Law of Ukraine "On the National Commission, which carries out state regulation in the spheres of energy and communal services".

Officially, the Regulator was created on the basis of Presidential Decree No. 738/94 of December 8, 1994, as an independent, non-departmental, permanent state regulatory body. The official name is the National Electricity Regulatory Commission. At that time, there were two Regulators in Europe: the British regulator OFFER (1989) and the Hungarian HEO (1994). The head and members of the Commission were appointed by the President of Ukraine. The candidacy for the position of Chairman of the Commission was submitted by the Minister of Energy. Candidates for the positions of commission members were submitted by the Chairman of the Commission and the Minister of Energy. The regulations on the body were approved by the President.

In 2000, the Law of Ukraine "On Natural Monopolies" and Presidential Decree No. 1572 of December 15, 1999 "On the System of Central Executive Authorities" were adopted, in connection with which Presidential Decree No. 1167/2000 of October 30 was adopted, respectively before which the Regulator acquired the status of being controlled and accountable to the President of Ukraine. The chairman and members of the commission were appointed by the President of Ukraine on the proposal of the Prime Minister of Ukraine. The official name of the regulator was the National Electricity Regulatory Commission of Ukraine (NERC of Ukraine).

On November 23, 2011, the Regulator was liquidated on the basis of Decree of the President of Ukraine No. 1057/2011 without legal succession. On the same day, by Decree of the President of Ukraine No. 1059/2011 and No. 1073/2011, two new state collegial bodies were created that were subordinate to the President of Ukraine and were accountable to the Verkhovna Rada of Ukraine: the National Commission for State Regulation in the Energy Sector and the National Commission, which carries out regulation in the field of communal services. Which were liquidated on the basis of Decrees of the President of Ukraine No. 692/2014 and No. 693/2014 dated August 27, 2014 without legal succession.

On the same day, the Decree of the President of Ukraine No. 694 of August 27, 2014 established the National Commission for State Regulation in the Energy and Utilities Sectors as a state collegial body subordinate to the President of Ukraine and accountable to the Verkhovna Rada of Ukraine.

And already on September 22, 2016, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the National Commission Carrying Out State Regulation in the Fields of Energy and Communal Services", which determined the status of the Regulator as a permanent independent state collegial body.

According to the corresponding law, amendments were made to the Law of Ukraine "On Natural Monopolies"; according to which, the provisions of Chapter III, on the procedure for formation and liquidation of the body, do not apply to the National Commission, which carries out state regulation in the fields of energy and communal services.

But the Law of Ukraine “On the National Commission Carrying Out State Regulation in the Fields of Energy and Communal Services” did not provide for the procedure for the formation or reorganization of a body subordinate to the President of Ukraine into a new independent body. Thus, from the moment of entry into force of the relevant law, the powers of the Regulator were exercised by the existing state collegial body.

In part, the issue was settled by the Law of Ukraine dated April 13, 2017 “On the Electricity Market”. Thus, the “Final and Transitional Provisions” of the above-mentioned law stated that before the start of the activity of the Regulator, which must be formed in compliance with the requirements, regarding independence and independence on the basis of a separate law, the functions, rights and duties are performed by the National the commission carrying out state regulation in the spheres of energy and communal services.

In December 2019, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Ensuring Constitutional Principles in the Fields of Energy and Public Utilities.” According to the relevant law, the status of the Regulator was established as a body of executive power formed by the Cabinet of Ministers of Ukraine.

According to Art. 5 of the Law of Ukraine “On Central Bodies of Executive Power”, central bodies of executive power are formed, reorganized and liquidated by the Cabinet of Ministers of Ukraine at the request of the Prime Minister of Ukraine.

The latest version of the current Law of Ukraine “On the National Commission that carries out state regulation in the spheres of energy and communal services” defines the status of the Regulator as a permanent central body of executive power with a special status, which is formed by the Cabinet of Ministers of Ukraine.

The Regulator consists of seven members, including the Chairman. Appointment to the position of a member of the Regulator is carried out based on the results of an open competitive selection. The competitive commission for the selection of members is formed under the Cabinet of Ministers of Ukraine.

Thus, after analyzing the process of creation and transformation of the State Regulator, one can see how the National Commission gradually gets rid of the influence of the President of Ukraine and receives a European version of the Regulator’s functioning with partial influence of the Cabinet of Ministers, as the body under which the Regulator itself was created. By signing the Association Agreement with the European Union, Ukraine undertook to implement EU energy standards. The functioning of an independent Regulator is one of the key conditions for activity in the electricity market for building a competitive market, countering monopolies, ensuring a balance of interests of market participants and consumers.

For example, in the Republic of Latvia, the Regulator is called the Commission on Communal Services. The powers of the Regulator are regulated by the Law “On Regulators of Communal Services” dated June 1, 2001.

The purpose of the activity of the Latvian Regulator in accordance with the Law is to ensure the possibility of obtaining continuous, safe and high-quality communal services, the tariffs (prices) of which correspond to economically justified costs, as well as to promote development and economically justified competition in the regulated industries by determining the procedure for regulating communal services and legal relations in the sphere provision of communal services [6].

According to Clause 4 of Art. 7 of the Law “On Regulators of Communal Services”, the Chairman of the Regulator, who is also the Chairman of the Council (hereinafter - the Chairman), and four members of the Council are appointed to the position by the Seimas on the proposal of the Cabinet of Ministers. A member of the Council, including the Chairman, may be reappointed no more than once [6].

Similarly, as in Ukraine, the Cabinet of Ministers of Latvia selects candidates for the post of chairman and member of the Council in an open competition.

The regulator of the Federal Republic of Germany is called the Federal Network Agency and has much more functions as it is the central authority for Germany's infrastructure in the energy, telecommunications, postal and rail markets.

The purpose of the activity of the German Regulator is to establish framework conditions for fair competition in certain areas of activity and to protect the rights of consumers.

The Federal Network Agency for Electricity, Gas, Telecommunications, Posts and Railways is an independent higher federal body within the portfolio of the Federal Ministry of Economy and Climate Action [7].

As in Ukraine and Latvia, the German Regulator is formed and functions under the Cabinet of Ministers of Ukraine.

In the Czech Republic, there is a Regulator - the Energy Regulatory Office (ERO), which is subordinate to the Ministry and the State Energy Regulatory Office.

According to Clause 4 of Art. 17 of the Law on Energy, the aim of the activity of the Czech Regulator is to protect the legitimate interests of consumers and consumers in the fields of energy, regulate prices, promote competition in the energy sectors, perform market supervision in the energy sectors, encourage the use of renewable and secondary sources of energy, support the combined production of heat and electric energy, supporting biomethane, promoting decentralized electricity production and protecting the interests of consumers and consumers in order to satisfy all reasonable requirements for energy supply and protect the legitimate interests of regulated licensees [8].

Members of the Council and its Chairman are appointed and dismissed by the Government based on the proposal of the Minister of Industry and Trade. The term of office of members of the Council is 5 years and begins on January 1, in accordance with Clause 2 of Art. 17b of the Law on Energy [8].

In 1997, the Republic of Poland adopted the Law on Energy, which determined the status of the Regulator - the Energy Regulatory Office (ERO).

According to Art. 23 of the Law "On Energy", the actions of the independent regulatory body are aimed at fulfilling the goal set by the legislator, aimed at creating conditions for the sustainable development of the country, ensuring energy security, economical and rational use of fuel and energy, developing competition, countering the negative impact of natural monopolies, taking into account the requirements of protection environment, obligations arising from international agreements, and balancing the interests of energy companies and fuel and energy consumers [11].

The Ministry of Climate and Environment is responsible for the country's energy policy, markets and infrastructure, energy efficiency and energy security issues, as well as climate policy. The Ministry of Climate and the Energy Regulatory Office are jointly responsible for regulatory policy.

The president (head) of the Energy Regulatory Office is appointed by the Prime Minister for five years based on the results of the competition [11].

Thus, the Ukrainian and European Regulators are independent and independent bodies in the system of regulating relations in the electricity market. At the same time, the Regulators are under the conditional authority of the Ministry (Government) or have a special status under the executive authority. Under the chairmanship of the Ministry, election of members of competition commissions and members of the Regulator itself is carried out.

This format of the exercise of powers by the Regulator in Ukraine prompts reflection on the legitimacy and legality of rights and powers.

O.V. Garagonych pointed out that legitimacy is a property, a quality of a business entity, which determines the possibilities of realizing economic legal personality, and the process of acquiring such a property, quality is the legitimation of a business entity. At the same time, legalization is one of the stages of legitimization of business entities, during which their state registration is carried out.



A similar approach to determining the place of legalization in the process of state confirmation of the legality of the entry of individual subjects into the relevant spheres of legal relations [12].

It should be noted that all Regulators in the European Union comply with Directive 2003/54/EC, which introduced the requirement for member states to establish regulatory bodies with special powers. However, experience shows that the effectiveness of regulation is often hampered by the lack of independence of regulatory bodies vis-à-vis governments, as well as insufficient powers and freedom of action. For this reason, at its meeting in Brussels on March 8 and 9, 2007, the European Council invited the Commission to prepare legislative proposals that would establish a greater harmonization of powers and strengthen the independence of national regulatory bodies in the field of energy. The specified national regulatory authorities should be able to deal simultaneously with the electricity and gas sectors [9].

**5. In summary,** it should be noted that the state carries out legal regulation in the field of energy and communal services through the National Commission, which carries out state regulation in the spheres of energy and communal services.

Having studied the process of formation and formation of the State Regulator as an independent body for 30 years of existence, it is possible to distinguish several statuses with periods: 1. The status of being controlled and accountable to the President of Ukraine 1994-2011; 2. Status under the control of the President of Ukraine and accountable to the Verkhovna Rada of Ukraine 2011-2016; 3. The status of the Regulator as a permanent independent state collegial body since 2016 is active today. The latest status of the Regulator is positioned as an independent and independent body under the Cabinet of Ministers of Ukraine, which embodies the European requirements of the legislation. And if we are talking about an independent body that carries out regulation in the spheres of energy and communal services, then none of the state authorities should appropriate powers or have influence over such a body.

An important area of improvement of the legislation regarding the autonomy and independence of the Regulator is the adoption of amendments to the Law of Ukraine "On the National Commission, which carries out state regulation in the spheres of energy and communal services" in terms of the appointment, termination and legal status of the members of the Regulator. Since the Cabinet of Ministers of Ukraine makes a decision on the appointment of a member or members of the Regulator from the list submitted by the Competition Commission or may terminate their powers, this procedure emphasizes the dependence of candidates and, in the future, members on the executive power (Government). Therefore, the appropriate powers should be given to the Competition commissions for the selection of candidates. The implementation of these proposals will contribute to the development of the independence and independence of the Regulator in the performance of its powers.

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