PENALTIES AS A FORM OF ECONOMIC-LEGAL LIABILITY IN THE ENERGY SECTOR

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Annotation. In the article, the current state of research on the application of penalties as a form of economic-legal liability is analysed, both generally and specifically in the energy sector. The specificity of applying this form of economic-legal liability in the energy sector is studied, along with existing problematic issues related to its application, and proposals for their resolution are provided. The enforcement practices of the Supreme Court regarding the application of this form of economic-legal liability are examined.

The role of the National Energy and Utilities Regulatory Commission in regulating the application of penalties among participants in energy markets is studied.

Ways to improve the legal regulation of penalty application in the energy sector are proposed, including minimizing the likelihood of participants in energy markets committing similar violations in the future and fostering a high level of adherence to current legislation.

The aim of the work is to identify the patterns and essential characteristics in the application of penalties as a form of economic-legal liability; to define what constitutes penalties in economic legal relations; to determine the specific features of this form of liability in the energy sector; to uncover the grounds and key characteristics applied in the energy sector under the current conditions following the establishment of energy markets in Ukraine (natural gas and electricity markets).

The study also aims to determine the main features and distinctions between liquidated damages, fines, and penalties.

The following materials were used in the research: legal acts that define the grounds for applying penalties; works of scholars conducting scientific and practical research in the field of economic-legal liability; and domestic court practices.

The study identified the main patterns in the application of such a form of liability as penalties, both generally and in the energy sector. The grounds and key characteristics of penalty application in the energy sector are revealed, and examples of the application of such penalties to economic entities-participants in energy markets-are provided.

The research employed methods of theoretical generalization and grouping, formalization, analysis and synthesis, and logical generalization of results (formulating conclusions).

Key words: energy, energy markets, economic activity, economic-legal liability, penalties, liquidated damages, fine, penalty, reduction of penalties, forms of economic-legal liability.

1. Introduction.

General provisions on the legal nature and specifics of the application of penalties are outlined in Chapter 26 of the Commercial Code of Ukraine [1] (hereinafter also referred to as the CC of Ukraine). It defines what penalties are, how their amount is determined, the grounds for their application, and the circumstances under which the reduction of accrued penalties is allowed.

The legislator, in the CC of Ukraine, classifies penalties into liquidated damages, fines, and penalties. Article 549 of the Civil Code of Ukraine [2] specifies that liquidated damages (fine, penalty) are a monetary sum or other property that the debtor must transfer to the creditor in the event of a breach of the debtor's obligation.

In the energy sector, penalties, as a form of economic-legal liability, are the most common type of liability for late fulfilment of contractual monetary obligations between participants in energy markets. Penalties are an effective and widespread type of economic-legal liability both in general and within the energy sector. However, this form of liability has several specific features, such as the possibility for the court to reduce its amount without the creditor's consent, limitations on the accrual period, the similarity of fines to administrative-economic fines, etc. These and other specific features will be the subject of study in this article.

Due to the high efficiency of this type of sanction, the state has introduced specific mechanisms for limiting and cancelling penalties in the energy sector, which require a separate analysis regarding their compliance with current legislation and generally accepted principles of law.

Despite the widespread use of this type of sanction, there is no comprehensive definition of the terms "penalties," "liquidated damages," "fine," and "penalty." Therefore, the objectives of this study also include the formulation of definitions for these terms, identifying the differences between such types of penalties as liquidated damages, penalties, and fines, as well as distinguishing the differences between them.

The lack of clarity on the specific features of application and the definition of the terms "penalties," "liquidated damages," "fine," and "penalty" often leads to the incorrect application of this form of liability by participants in commercial relations, thereby resulting in the violation of the rights of these participants.

2. Analysis of scientific publications.

The penalties have been studied both as an independent and distinct type of economic-legal liability, and in conjunction with other existing forms of economic-legal liability.

V.S. Shcherbyna explored economic-legal liability in the doctrine of Ukrainian commercial law and its legislative consolidation [3, pp. 81–93].

S.M. Mamedova examined certain issues regarding the collection of penalties and fines for breaches of economic-legal obligations, the grounds for applying penalties, the financial condition of the parties as a basis for reducing the amount of penalties, and the overall grounds for such reductions [4–8]. She also defended her dissertation for the candidate of legal sciences on the topic: "Application of Penalties in Economic Relations" [9].

S.V. Hapalo researched sanctions in Ukrainian commercial law [10, p. 20].

O.A. Belyanevych studied the peculiarities of consumer liability in contractual energy supply relations [11].

O.V. Haragonich investigated the risks of decodification of Ukrainian commercial legislation [12, p. 97], and the related risks of excessive "legislative creativity" by government bodies in the "creation" of new forms of liability.

The above-mentioned studies underscore the relevance and necessity of this research, aimed at identifying the prevalent types of penalties in energy markets, their specifics, subjects, objects, law enforcement practices, and more.

3. The aim of the work is to identify the patterns and essential characteristics in the application of penalties as a form of economic-legal liability; to define what constitutes penalties in economic legal

relations; to determine the specific features of this form of liability in the energy sector; to uncover the grounds and key characteristics applied in the energy sector under the current conditions following the establishment of energy markets in Ukraine (natural gas and electricity markets).

4. Review and discussion.

According to Article 230 of the Commercial Code of Ukraine, penalty sanctions are economic sanctions in the form of a monetary sum (penalty, fine, or late fee) that a participant in economic relations is obliged to pay in the event of violating the rules of conducting economic activity or failing to fulfil or improperly fulfilling an economic obligation.

The application of this type of liability is possible both in tort obligations (in case of violating the rules of economic activity) and in contractual obligations (for failure to fulfil or improper fulfilment of an economic obligation).

The application of penalty sanctions in tort obligations is closely related to such administrative-economic sanctions as the administrative-economic fine (Article 241 of the Commercial Code of Ukraine), which is why one of the objectives of this research is also to identify the differences between these two types of economic sanctions.

Chapter 26 of the Commercial Code of Ukraine is titled "Penalty and Operational-Economic Sanctions," which indicates that these types of sanctions are closely interconnected and can be applied simultaneously in contractual obligations.

To conduct a qualitative study of penalty sanctions as a form of economic-legal liability, it is necessary to formulate their definition, both as a whole and for their individual components.

Article 230 of the Commercial Code of Ukraine provides a definition of penalty sanctions based on their components rather than their legal nature, while the other provisions of the Commercial Code do not clarify these components.

Some scholars believe that a penalty, as one of the types of penalty sanctions, has a dual nature because it serves both as a guarantee of obligation fulfilment and as a measure of liability (as a penalty sanction). In fact, the penalty ensures the performance of an obligation by disciplining one party and encouraging it to fulfil its duties, while simultaneously imposing an additional obligation to pay a monetary amount [13].

Penalty sanctions should be defined as a form of economic-legal liability that is not a separate obligation and is expressed as a voluntary (being a right, not an obligation) negative economic impact by the creditor on the debtor's financial position. Such sanctions may be applied in contractual and tort obligations in the manner prescribed by the contract and/or law, with the aim of ensuring the fulfilment of an obligation or stopping the breach of such an obligation, minimizing the negative consequences of the breach, while maintaining a balance of interests between the creditor and the debtor. The amount of such sanctions cannot exceed the limit established by the contract and/or law and may be reduced by a court decision, regardless of the creditor's will.

S.M. Mamedova further specified the definitions of penalties, fines, and late fees as follows:

a) a penalty is a sanction accrued for the entire period of violation in the case of gross, systematic non-performance or improper performance of economic obligations by a participant in economic relations, the amount and method of calculation of which is established by law or contract, and which is calculated as a monetary sum or, in cases provided by the contract, in items defined by generic characteristics;

b) A fine is a one-time sanction imposed for violating the rules of conducting economic activity, failing to perform, or improperly performing an economic obligation by a participant in economic relations, the amount and method of calculation of which is established by law or contract and calculated as a monetary sum.

c) A late fee is a penalty sanction that is accrued for each day of delay in fulfilling monetary and non-monetary economic obligations by a participant in economic relations, the amount and method of calculation of which is established by law or contract and is calculated as a monetary sum [14].

The provided definitions do not fully reveal the differences between the components of penalty sanctions and do not clarify how a penalty differs from a late fee or a fine.

In this regard, it is worth agreeing with the established practice of the Supreme Court as outlined in the decision of the Grand Chamber of the Supreme Court dated June 1, 2021, in case No. 910/12876/19 [14], which concludes that, according to Article 549 of the Civil Code of Ukraine, late fees and fines are forms of penalties, and according to Article 230 of the Commercial Code of Ukraine, they are types of penalty sanctions, meaning they are not separate and independent forms of legal liability.

At the same time, Article 284 of the Commercial Code of Ukraine mentions penalties as a separate type of liability, and penalties are similarly mentioned in Part 2 of Article 785 of the Civil Code of Ukraine, where it is stated that if the lessee fails to fulfil the obligation to return an item, the lessor has the right to demand from the lessee the payment of a penalty in the amount of double the rent for the period of delay in returning the item.

Thus, a penalty is a type of sanction that involves the payment of a specific sum to the creditor, or the transfer of items defined by generic characteristics for the entire period of delay in fulfilling the obligation (for example, double the rent for the period of delay in returning the item).

Therefore, a penalty combines characteristics of both a late fee (depending on the period of delay) and a fine (calculated as a fixed amount or as a percentage of a certain sum for the period of delay). However, only a penalty can be collected in the form of items defined by generic characteristics, whereas late fees and fines can only be collected in monetary form. The amount of a penalty, unlike a late fee, is not legally capped.

Late fees and fines, in turn, are forms of penalties that can be applied either together or separately, while penalties are applied only as an independent type of penalty sanction.

The late fee is calculated as a percentage of the debt amount, but no more than double the National Bank of Ukraine's discount rate at the time of the delay, for each day of delay. In this case, there is a direct correlation: the longer the delay in fulfilling the obligation, the greater the late fee.

A fine is calculated as a one-time payment after a breach of obligation, either as a fixed amount or as a percentage of a certain sum. In this case, there is no direct correlation with the duration of the delay. If there is a violation, there is a fine of a specific amount.

The simultaneous existence of all three definitions in legislation, which are used differently in the Commercial Code of Ukraine and the Civil Code of Ukraine, complicates their practical application. Therefore, it would be reasonable to align the definitions of penalties, fines, and late fees in these Codes with the proposed definitions.

The definitions and examples provided above, taken together, allow for the correct identification of each type of penalty sanction, ensuring their proper formulation in regulatory acts, contracts, and correct application in practice. This aims to maintain a reasonable balance of interests between both parties in an obligation.

As for the difference between penalty sanctions (Article 230 of the Commercial Code of Ukraine) and the administrative-economic fine (Article 241 of the Commercial Code of Ukraine), the difference lies only in the subject composition. Penalty sanctions apply only between participants in economic relations, as specified in Article 2 of the Commercial Code of Ukraine, while the administrative-economic fine is applied to business entities by authorized government bodies or local government bodies. Although in the first case, government or local government bodies may also be participants in economic relations, when applying penalty sanctions, they act as business entities, not as authorities.

Penalty sanctions, given that they have an exclusively negative economic effect, unlike administrative-economic or planned-economic sanctions, which may have other negative effects (organizational,

planning, etc.), cannot be absolute (such as suspension, revocation of a license, liquidation of a business entity, etc.). Therefore, their amount, the procedure for application, and the mechanisms of implementation must be, and often are, clearly regulated.

In the decision of the Constitutional Court of Ukraine No. 7-rp/2013 dated July 11, 2013, the criteria for penalties are defined: fairness, good faith, and reasonableness, which are components of the general constitutional principle of the rule of law [15].

In energy markets, the National Commission for State Regulation of Energy and Public Utilities (hereinafter also referred to as the NEURC, Regulator) plays an active role in regulating the application of penalty sanctions. The possibility of accruing late fees is specified in each standard and model contract that provides for the payment of services or goods, the forms of which are approved by the NEURC.

For example, subparagraph 16 of paragraph 1 of NEURC Resolution No. 332 dated February 25, 2022 [16] suspended the accrual and collection of penalty sanctions between participants in the electricity market for the period of martial law and for 30 days after its termination or cancellation.

On April 8, 2020, the NEURC adopted Resolution No. 766 "On the actions of electricity market participants during the quarantine and restrictive measures related to the spread of coronavirus disease (COVID-19)" (hereinafter also referred to as Resolution No. 766 of April 8, 2020) [17], which imposed restrictions on the application of measures to electricity suppliers concerning the accrual of late fees and fines for violating payment deadlines for electricity transmission services.

The NEURC, as a central executive body, does not have the authority to establish regulatory norms that directly contradict the provisions of the Civil Code and the Commercial Code of Ukraine. This issue was examined by the United Chamber of the Commercial Cassation Court of the Supreme Court in case No. 911/1359/22 [18]. In this context, the Supreme Court considered whether the provisions of the NEURC's subordinate regulatory acts are special in relation to the provisions of the Civil Code and the Commercial Code of Ukraine.

The basis for transferring the case to the United Chamber was the need to resolve the issue regarding the relationship between the norms of civil legislation and the norms of NEURC acts, as discussed above.

Previously, the Supreme Court had already considered a similar issue regarding NEURC Resolution No. 766 dated April 8, 2020 (Supreme Court Resolution dated August 19, 2022, in case No. 912/1941/21 [19]) and noted the following:

Article 6 of the Law of Ukraine "On the Electricity Market" stipulates that state regulation of the electricity market is carried out by the Regulator within the limits of the powers defined by this Law and other legislative acts. The Regulator has the right, among other things, to issue decisions that are binding on market participants.

Paragraph 1 of Resolution No. 766 of April 8, 2020, for the period of quarantine or restrictive measures related to the spread of coronavirus disease (COVID-19) and for 30 days after its cancellation, instructed the TSO not to apply to electricity suppliers the measures provided in subparagraphs 1-6 of paragraph 1.7.2 of Chapter 1.7 of Section I of the Market Rules, approved by NEURC Resolution No. 307 dated March 14, 2018, and the measures provided in paragraph 5.7 of the Standard Agreement on the Provision of Electricity Transmission Services, which is Appendix 6 to the Transmission System Code.

NEURC Resolution No. 93 dated January 27, 2021, "On Amendments to NEURC Resolution No. 766 of April 8, 2020," paragraph 2 of Resolution No. 766 was excluded.

Thus, on April 8, 2020, NEURC adopted a decision, mandatory for market participants, formalized in Resolution No. 766, to prevent the TSO from applying measures, particularly those provided for in paragraph 5.7 of the Standard Agreement for the Provision of Electricity Transmission Services (which is similar in content to paragraph 6.7 of the service agreement), i.e., regarding the accrual of penalties and the imposition of fines. The rules established by this Resolution were in effect from April 8, 2020, to January 26, 2021.

The provisions of paragraph 2 of Resolution No. 766 from April 8, 2020, ceased to apply from January 27, 2021; however, they were valid and operational from the moment of the Resolution's adoption until their exclusion by Resolution No. 93 of January 27, 2021, as the latter did not have retroactive effect, but only excluded the application of paragraph 2 of Resolution No. 766 from April 8, 2020, for the future.

Thus, the Supreme Court, in case No. 912/1941/21, concluded that NEURC acted within the framework and manner prescribed by the law when it prohibited the collection of penalties from energy market participants during specific periods (COVID-19, martial law) through its Resolutions.

Without assessing the powers granted to NEURC by law, it is worth noting that the mechanism NEURC chose to limit liability during the quarantine and martial law for late payment of financial obligations by energy market participants contradicts the existing legal mechanisms operating in the energy markets, which were created by NEURC itself.

The possibility of imposing fines and penalties for breaches of contractual obligations in energy markets is stipulated in the provisions of the Standard Agreements approved by NEURC. Therefore, to limit liability during the quarantine and martial law for late fulfilment of financial obligations, NEURC should not have adopted separate Resolutions but rather removed from the standard and template forms of agreements the provisions on liability in the form of penalties and fines. In this way, this form of liability could not have been applied to the respective energy market participants. Such changes would have resulted in the contracts not stipulating the relevant penalty amounts, and the laws do not provide for the payment of penalties or fines for late fulfilment of obligations in energy markets either.

In the Decision of the Grand Chamber of the Supreme Court dated December 10, 2019, in case No. 904/4156/18 [20], it was stated that if the terms of a contract do not specify the amount of the penalty for the breach of a financial obligation, and part six of Article 231 of the Commercial Code of Ukraine (CCU) does not specify a concrete amount (percentage) of the penalty to be collected, but only establishes the method for determining it based on the discount rate of the National Bank of Ukraine and the period during which such a sanction may be applied, there are no grounds for applying such a measure of liability as a contractual penalty.

A problematic issue regarding the application of penalties is the possibility of simultaneously collecting both a fine and a penalty for the same violation. Currently, there is consistent judicial practice indicating that such simultaneous collection is legitimate, as it is directly provided for in part 2 of Article 231 of the CCU.

A controversial issue in practice is the simultaneous collection of two types of penalties for the same violation. Legal practice has developed in the direction that current legislation does not grant participants in commercial relations the right to include in a contract the possibility of collecting two types of penalties simultaneously.

Simultaneous collection from a debtor who has breached a contractual obligation of a penalty equal to double the NBU discount rate on the amount of the unpaid financial obligation for each day of delay, along with another penalty, for example, 0.3% of the overdue payment amount for each day of delay, contradicts Article 61 of the Constitution of Ukraine. If a contract contains provisions for double penalty collection, the court should reject claims for the collection of that penalty whose size and accrual method do not comply with legal requirements (Supreme Court Commercial Cassation Court Decision dated December 19, 2019, in case No. 912/1153/19) [21].

There are also contentious provisions in Article 233 of the CCU, which regulates the issue of reducing the amount of penalties. The definitions used in this article are quite subjective and not subject to specific interpretation, often becoming a matter of dispute between the parties to a commercial obligation and the basis for appealing court decisions in which they were applied.

The use of terms such as "excessively large" and "other interests of the parties that deserve attention" allows for manipulation, especially in energy markets, where most debtors are enterprises, institutions, and organizations funded by budgets at various levels. Such entities can easily demonstrate in court

that the penalties owed are excessively large compared to the creditor's damages, or that their financial condition is extremely unsatisfactory, among other arguments. This, in turn, fosters a systematic lack of accountability for the late fulfilment of financial obligations and leads to recurrences where the same entities remain debtors for decades.

On the other hand, part 1 of Article 550 of the Civil Code of Ukraine (CCU) stipulates that the right to penalties arises regardless of whether the creditor has suffered losses. Relevant judicial practice also indicates that the creditor is not required to prove the existence of losses when collecting penalties, which highlights the competition between the norms of the CCU and the Civil Code of Ukraine regarding the necessity of the creditor proving losses when collecting penalties.

It would be expedient to resolve such a competition of norms by making changes to Art. 233 of the Civil Code of Ukraine, where it is noted that the amount of fines can be reduced by agreement of the parties or by a reasoned court decision, and the court, when reducing the amount of fines, guided by the norms of procedural legislation, should justify its decision on the reduction of sanctions, in each case with specific circumstances.

Since the problem of untimely fulfilment of monetary obligations in the energy markets is well-known and quite acute, special Laws on limiting the liability of certain participants of the energy markets for the untimely fulfilment of their own monetary obligations are adopted.

Such Laws contain several specific mechanisms that are specific to the natural gas and electric energy markets, which requires a more thorough study of the specified legislation to analyse the implemented mechanisms for their compliance with other legislation and generally recognized principles of law.

On November 3, 2016, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 1730-VIII "On measures aimed at settling debts of heat supply and heat generating organizations and enterprises of centralized water supply and drainage for consumed energy" (hereinafter also Law No. 1730) [22].

Law No. 1730 created several specific mechanisms for settling debts of heat supply and heat generating organizations and enterprises of centralized water supply and drainage (hereinafter referred to as Enterprises) on the energy markets, but in the context of this study, it is proposed to focus on the mechanisms provided for in its article. 7, namely on the mechanisms for write-off of penalties (fines, penalties), inflation charges, annual interest.

The legislator established that the debts of the Enterprises for natural gas consumed before June 1, 2021, services for its distribution and transportation, etc. repaid by December 31, 2022, as well as for debt restructured in accordance with Art. 5 of the Law, penalty (fine, penalty), inflation charges, annual interest are not charged.

Penalties (fines, penalties), inflation charges, annual interest charged on the Enterprises' debt for natural gas consumed before June 1, 2021, its distribution and transportation services, etc. received before 01.06.2021 and unpaid as of the date of inclusion in the register are subject to write-off, provided that the principal debt is repaid by 12.31.2022 or are subject to write-off, provided that the Enterprises fully comply with the terms of the concluded debt restructuring agreement.

As of June 1, 2021, penalties (fines, penalties), inflation charges, and annual interest are not charged on debts owed by Enterprises for consumed electricity, centralized water supply and drainage services, and the charges are subject to settlement as follows:

a) penalty (fine, interest), inflation charges, annual interest, accrued on the debt specified in the first paragraph of this part, the repayment of which was made before 01.06.2021 or before the conclusion of restructuring agreements are subject to write-off.

b) penalty (fine, interest), inflation charges, annual interest are subject to write-off, provided that the Enterprises fulfil the debt restructuring agreement.

Law No. 1730 defined the mechanisms that provided for the write-off of already accrued penalties (fines, penalties), inflation charges, annual interest and prohibited their accrual for the future.

As stated in its preamble, the Law defines a set of measures aimed at ensuring the sustainable functioning of heat supply and heat generating organizations and enterprises of centralized water supply and drainage, which is a socially significant and important goal aimed at achieving legitimate goals.

The provisions of the Central Committee and the Civil Code of Ukraine do not provide for the possibility of writing off and/or prohibiting the imposition of fines without the consent of the creditor. Their provisions also do not provide for the write-off and/or prohibition of charging inflation and annual interest, which, according to the consistent practice of the Supreme Court, are not liability and/or sanctions, but are a way of compensating for losses in connection with the non-return/non-payment of funds and are payment for the use of funds (Decision of the Supreme Court of Ukraine dated 06.06.2012, proceedings 6-49 cs12 [23], Decision of the Grand Chamber of the Supreme Court dated 16.01.2019 in case No. 373/2054/16 [24]).

Law No. 1730 does not provide for the write-off of the specified charges to end consumers, i.e. Enterprises that have the right to write-off and not charge them in the future penalties (fines, penalties), inflationary charges, annual interest on their debt to other market participants have no obligation debit the specified amounts to consumers to whom they provide services or supply energy resources, which in itself contradicts the principles of equality and legality.

The law also violates the principle of res judicata, which means the finality of a court decision that has entered into force and cannot be reviewed.

The violation of the specified principle consists in the fact that the write-off of penalties (fines, penalties), inflation charges, annual interest is not dependent on whether such charges were reflected in the relevant court decision or not, that is, even if such charges were already the subject of consideration in court and reflected in the final court decision, they should still be written off, that is, the Law requires revision of a legal and final court decision, without creating legal grounds for this.

Law No. 1730 also violates the generally recognized principle of law according to which laws and other normative legal acts do not have retroactive effect in time. This principle is enshrined in Part 1 of Art. 58 of the Constitution of Ukraine [25].

Penal sanctions are an effective way of influencing the debtor, in connection with which the state authorities often take measures that have a direct impact on their application, which in turn leads to the fact that the responsibility of certain business entities is limited or excluded altogether.

For fines to effectively perform a human rights and preventive function, their application must be clear and understandable, and most importantly, irreversible, like any sanction applied for breach of obligations.

5. Conclusions.

Fines are a common and effective form of economic and legal responsibility, both in the field of energy and in other areas of business. Most often, such sanctions are applied for violation of monetary obligations.

Their effectiveness, in the field of energy, is often levelled by normative regulation, which limits or cancels the possibility of charging such sanctions, although the purpose of such restrictions is fully justified.

In order for fines in the field of energy to be effective, but at the same time, their application does not threaten the functioning of energy systems and market participants, it is necessary to make changes to the legislation that would limit the maximum amount of fines for certain categories of its participants, in order to their use did not lead to the loss of solvency and/or blocking of the work of such energy market participants, but it is necessary to move away from the practice of banning their use, full or partial write-off, etc., especially when it is done retrospectively.

At the same time as limiting the maximum number of fines, the state should maximally promote the creation of effective economic mechanisms that would allow such market participants to conduct unprofitable activities and fulfil their obligations in a timely manner.

Such mechanisms should include fair tariff formation, the provision of appropriate subsidies from the budgets of different levels to market participants, if their tariffs are not economically justified, and the establishment of economically justified tariffs is extremely burdensome for end consumers. Subsidies should be provided directly to end users and should cover the difference between the economically justified and the actual tariff, while encouraging them to save the relevant resources. Such models of subsidization have been operating effectively for a long time in most countries of the European Union, so they only need to be effectively implemented in national legislation.

Obligatory timely fulfilment of obligations by energy market participants should be a dogma for all energy market participants without any exception.

In the field of energy, a situation has arisen when certain economic entities systematically do not fulfil their own monetary obligations, accumulate billions of debts along the chain between market participants, then the state adopts a normative document that limits and cancels the responsibility of a certain category of energy market participants, debts are forcibly restructured for a certain period, and while the restructured debt is paid, a new one is accumulated and everything is repeated from the beginning.

An effective system should not work like this, and therefore it is necessary to focus efforts not only on improving the regulatory regulation of the definition, application and reduction of fines, but also on creating mechanisms for effective financing of energy market participants, including consumers, prevention of violations, because sanctions are not cannot be an end in themselves, no matter how fair and effective they are.

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