



ISSN 1392–6195 (print)
ISSN 2029–2058 (online)
JURISPRUDENCIJA
JURISPRUDENCE
2010, 2(120), p. 379–395.

KEY ELEMENTS OF THE LEGAL STATUS OF THE NATURAL GAS MARKET REGULATORY INSTITUTIONS IN LITHUANIA AND IN THE EUROPEAN UNION MEMBER STATES: A COMPARATIVE ANALYSIS

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Received 1 May, 2010; accepted 10 June, 2010

Abstract. *The article analyses the legal status of the natural gas market regulatory institutions in Lithuania and in the member states of the European Union (EU). First, the authors assess the most important elements of the legal status of the natural gas market regulators in the EU member states, namely, the degree of autonomy (type of institution, appointment and dismissal procedures of management, duration of the terms of office, sources of funding) and the measures aimed at ensuring accountability, transparency, and prevention of conflicts of interest. Second, the legal status of the National Control Commission for Prices and Energy (Commission), which carries out functions of regulation and control of the natural gas sector in Lithuania, is examined. Finally, the authors conclude that the imperfections in the regulation of the legal status of the Commission result in several negative effects and provide reasoned proposals regarding the improvement of the legal status of the Commission.*

Keywords: *natural gas, natural gas market, regulation, regulatory authority, legal status, National Control Commission for Prices and Energy.*

Introduction

The research problem. The Commission performs functions that have a significant impact on consumers, energy companies, and the overall economic situation in Lithuania. The Commission is charged with guaranteeing the effective functioning of the natural gas sector, which promotes the economically and legally sound competition in the gas market and ensures that consumers, system operators and natural gas undertakings are not discriminated against. Given the importance and the complexity of these functions and the evaluation of the best practices of the regulatory authorities of the EU member states, adequate resources should be allocated to the Commission in terms of staff, expertise, and financial means. To ensure independence from political influence and business interests, the Commission must be able to recruit qualified specialists in relevant fields, such as energy, auditing, and accounting among others, and to improve the qualification of already employed professionals in order to avoid information asymmetry (such information asymmetry occurs when service providers are better informed than the regulatory authority about the costs and technological possibilities).

The article analyses the legal status of the Commission and the resulting adverse consequences on the effectiveness of the economic regulation of the Lithuanian natural gas market, such as the distortion of the balance of interests between customers and gas companies.

Relevance of the study. The research problem outlined above addresses the needs of the society, the solution to the research problem requires purposeful legal regulation, and the study brings novelty (the topic has been barely addressed by legal scholarship in Lithuania to date) and is practically significant).

The purpose of the study: to provide proposals for improvement of the legal status of the Commission based on the experiences of the EU member states

The goals of the study are: 1) to examine key elements of the legal status of the natural gas market regulators in the EU member states and second, 2) having analyzed the legal status of the Commission, to propose possible methods of eliminating the weaknesses found.

Methodology:

Theoretical methods:

1. *The systemic analysis method* was applied to analyse the regulation of the legal status of the Commission as the part of the system of the EU natural gas market regulatory authorities. The systematic approach was applied to analyse the key elements of a legal status of such institutions, namely, the degree of autonomy (type of institution, procedure of appointment and dismissal of management, duration of term of office, sources of funding) and measures aimed at ensuring accountability, transparency, and prevention of conflicts of interest.

2. *The comparative analysis method* was applied to examine the most important elements of the legal status of the natural gas market regulators in the EU member states and Lithuania and to compare the positive and negative features of the legal status of the natural gas market regulators.

Empirical methods:

1. *The document analysis method* was used to obtain information by examining the literature, statistics, reports, and various legal acts. The authors used a qualitative document analysis, based on an intuitive understanding and summarising of documents. This method allowed them to assess the legal status of the natural gas market regulators in the EU member states and Lithuania and to submit proposals regarding the improvement of the legal status of the Commission.

2. *The professional experience method.* One of the authors has two years of professional experience preparing the draft Commission's orders and procedural documents. This author took part in administrative disputes between natural gas consumers and companies, checked compliance with the license terms, and represented the Commission in proceedings related to the issues of regulation of the gas market in ordinary and administrative courts.

1. Key Elements of the Legal Status of Natural Gas Market Regulatory Institutions in the EU Member States

Historically, natural gas undertakings were owned, operated and regulated by governments. The companies were protected from competition, and their activities were subsidized. The globalization and privatization of gas companies and other changes now demand a new type of a regulatory system, which would be enforced by clear, transparent and predictable rules, and thus would attract investors to the natural gas market.

The theoretical model of an independent energy market regulator was developed in the United States. According to this model, the regulators should be insulated from political influences and should act only according to expert and technical logic. These principles are recommended by the World Bank, the Organisation for Economic Cooperation and Development, the International Energy Agency and other international organizations, and in legal acts of the EU.

Literature on the subject identifies three basic requirements for a new type of regulatory body: autonomy, authority, and accountability.¹ Regulatory authority should be independent from political interference and business interests. Independence from political influence requires the regulatory authority to operate at arm's length with the political institutions. In other words, regulation must not depend on political circumstances prevailing during a specific period. Independence is required not so much by the regulatory authority but by other subjects of regulated activity, such as consumers and energy companies. Politicians should also benefit from the independence of the regulatory authority because they can avoid the responsibility for unpopular decisions, the technically difficult tasks, reports to the public (the decisions of the regulatory authority often require special skills, making it difficult to fully explain the decisions to the

1 Jankauskas, V. The Role of Regulator. *4th ERRA-CEU International Summer School on Energy Regulatory Practices 24-28 July 2006 Teaching Materials*. Energy Regulators Regional Association [interactive]. [accessed 03-03-2010]. <<http://www.erranet.org/Training/SummerSchool/2006#Materials>>.

public), and can justify the public expectation that the obligations of the politicians are duly performed (this is especially important right before elections).

The assessment of the independence of the regulatory institution presents some difficulties. Some scholars distinguish the following criteria to evaluate independence: 1) legal status, 2) procedures of appointment and dismissal of management and duration of term of office, 3) funding, 4) ability of other state institutions to change the decisions of the regulatory authority, 5) delegated functions, 6) right to impose sanctions, and 7) measures aimed at ensuring accountability, transparency, and prevention of conflicts of interest.²

Therefore, the regulator is independent if its legal status has the following elements: 1) the regulator acts autonomously from the executive power structure, 2) the heads of the regulatory institution are appointed for the period specified by law and are dismissed from office only on the basis of an exhaustive list of circumstances provided by law, and 3) the regulatory institution is financed by sectoral taxes and is not influenced by politicians in performing its economic regulatory functions, such as setting price ceilings.

It is impossible to analyse the functions of the regulatory authorities of all EU member states due to the limited scope of the article; therefore, the authors will only examine the generalized elements of their legal status, including the measures aimed at ensuring accountability, transparency, and prevention of conflicts of interest.

Considering the first element of the legal status the type of the regulatory authority the majority of the EU member states regulators operate as independent commissions, where the decisions are adopted collegially, or as agencies, where the important decisions are adopted unilaterally (these institutions are managed by a single person, the agency director). To ensure the independence of the regulatory authority, the collegial structure of a commission is more appropriate, because a collegial institution is harder to influence than a single person.

The second element of the legal status is much more complicated due to the diversity of procedures of appointment and dismissal and different lengths of management's term of office in the regulatory authorities in each EU member state. For example, in Latvia and Lithuania, the management of the regulatory authority is appointed by the Parliament; in Austria, Belgium, Cyprus, Portugal, Slovenia, Finland, and Sweden, by the Government; in Poland and Hungary, by the Prime Minister; in Ireland, Denmark, Estonia, Great Britain, Malta, and the Netherlands, by the appropriate minister (in different EU member states, the titles of the relevant fields of competence differ) or several ministers; in Italy and Slovakia, the President, in Luxembourg and Spain, the Monarch (the Grand Duke and the King, respectively); in France, Germany and Greece, several institutions.³ Participation by various public institutions (e.g., legislative and executive

2 Johannsen, K. S.; Pedersen, L. H.; Sorensen, E. M. *Independent Regulatory Authorities – a Comparative Study of European Energy Regulators*. AKF Forlaget [interactive]. 2004 [accessed 03-03-2010]. <http://www.akf.dk/udgivelser_en/container/2004/udgivelse_1700/>.

3 International Energy Regulation Forum [interactive]. 2006 [accessed 03-03-2010]. <<http://www.worldforum2006.org>>.

branches of power) is considered the most appropriate for appointing the management of the regulatory authorities (i.e. the German and French model).

Another aspect of this element of the legal status is the dismissal procedure of management of the regulatory authority. In most of the EU member states, the grounds for dismissal of management of the regulatory authority are clearly defined by legislation, but there are some exceptions. For example, in Malta, the members of the regulatory authority may be dismissed by the Minister for Resources and Rural Affairs, if that official considers that the member is no longer fit to hold the office, while in Denmark and Sweden, the heads of the regulatory authorities cannot be dismissed.⁴

The term of office for management of the regulatory authorities in the EU member states is regulated in various ways. However, in most countries (e.g. Austria, Czech Republic, Greece, Spain, Cyprus, Latvia, Luxembourg, Portugal, France, Slovenia, Sweden, Hungary and Germany), the 5- to 6- year term of office applies. In some countries, the number of consecutive terms of office is limited, while in others, there is no such limit. In other EU member states (e.g., in Italy and Slovakia), the 7-year term of office is established, while in Estonia, the term of office is not regulated. The authors believe that the term of office for management of the regulatory authority should not be linked to a political cycle (parliamentary or presidential elections, etc.); i.e., it should not depend on the change of the political majority. The details of the type of regulatory authorities in the EU member states, procedures of appointment and dismissal of management, and durations of each term of office are provided in detail the Annex No. 1.

The above-mentioned elements of the legal status of the regulatory authority indicate to what extent the policy makers have adopted the model of autonomous regulatory authority. These elements, however, cannot fully reflect the actual autonomy of such authorities. The declarative *de jure* autonomy of regulatory authorities often does not reflect the real situation, because regulatory authorities remain dependent on political institutions, which are directly involved in forming the budget of the regulatory authority. Therefore, the authors believe that a regulatory authority should be financed not only from the state budget, but also from other sources of financing. The following funding sources exist in the EU member states: 1) established percentage of or premium on regulated prices, 2) license fees or other fees paid directly to the regulatory authority (e.g., certain percentage of the annual income of regulated undertakings), 3) direct funding from the state budget, 4) percentage of imposed fines, and 5) mixed funding where the activities are partly financed from the state budget and partly from the sectoral taxes and other taxes.⁵ For instance, in the Czech Republic, Estonia, Slovakia and France, the budgets of the regulatory authorities are parts of their respective state budgets; however, in the majority of the EU member states, regulators have a separate budget and the right to collect charges and fees from the companies of the regulated sector. The details of the

4 International Energy Regulation Forum [interactive]. 2006 [accessed 03-03-2010]. <<http://www.worldforum2006.org>>.

5 CEER Regulatory Benchmark Report. Ref: C05-IEB-0803. Council European Energy Regulators (CEER). 6 December 2005, Brussels.

sources of funding of the regulatory authorities of the EU member states are provided in Table 1.

Table 1. Sources of funding of the regulatory authorities of EU member states*

EU member state	Separate budget	Sectoral charges/fees	Principle of collecting
Ireland	√	√	<ul style="list-style-type: none"> ▪ Fees for electricity and gas sold. ▪ All consumers finance the regulatory authority proportionately to the amount of electricity/gas consumed. ▪ The license application fee.
Austria	√	√	The fee is based on the expenditure of the regulatory authority. The fee is determined by the order of the Minister of Economics and Labour, and approved by the Supervisory council.
Belgium (federal regulator)	√	√	<ul style="list-style-type: none"> ▪ Charges for electricity and gas consumption. ▪ The production permit fee.
Czech Republic	–	–	–
Denmark	–	√	The charge for regulated undertakings is established by the order of the minister.
United Kingdom	√	√	The regulatory authority annually establishes the license fee methodology. According to this methodology, the taxes payable by the energy undertakings are calculated.
Estonia	–	–	–
Greece	√	√	Energy undertakings are taxed. The amount of tax is established by the order of the Minister of Development and the Minister of Economy, while the opinion of the regulatory authority is also taken into account.
Spain	√	√	Percentage of the access to network and the integral tariffs.
Italy	√	√	The regulatory authority is currently financed by 0.1% of the previous fiscal year income of licensed undertakings. The regulatory authority proposes the amount of charge. The decision is taken by the Ministry of Economy and Finance.
Cyprus	√	√	The regulatory authority sets a criteria, and, according to an established criteria, collects a license fee from licensed electricity and gas undertakings.
Latvia	√	√	The government establishes a public services regulatory fee for regulated undertakings. The fee is currently 0.2% of the turnover of public services provided during the previous calendar year. In the sectors regulated by the municipalities (heat), the fee is 0.4%.
Poland	–	√	Licence fees. Collected into state budget.
Luxemburg	√	√	The Grand Duke sets the fee for the regulated undertakings.
Malta	√	√	EUR 230,000 electricity license fee is levied.

Netherlands	√	√	Individual service charges are established. The charge is collected by the regulator, but the funds are transferred to the Ministry of Economic Affairs.
Portugal	√	–	–
France	–	–	–
Slovakia	–	–	–
Slovenia	√	√	Each year the regulatory authority proposes to the government to establish a fixed number of network charges.
Finland	–	√	Supervision and license fees are established annually by the ordinance of the Ministry of Trade and Industry. The proposal is submitted by the regulatory authority.
Sweden	√	–	–
Hungary	√	√	Supervision and <i>ad hoc</i> fees, established by the joint decision of the Minister of Economy and Transport and the Minister of Finance.
Germany	–	Pos- sible	The Energy law establishes that a portion of the costs incurred by the regulatory authority must be covered by market participants.

* **Source:** Council European Energy Regulators (CEER). CEER Regulatory Benchmark Report.- Ref: C05-IEB-0803. 6 December 2005, Brussels.

To ensure management's independence from business influences, the following two measures are applied: 1) restriction on ownership of equity in energy undertakings, and 2) prohibition of employment in regulated energy undertakings at the end of term of office. In Austria and the Netherlands, restrictions are applied on employment in the regulatory authority based on previous work experience in energy sector.

The independence of the regulatory authority must be combined with the principles of accountability and transparency. The implementation of the principle of accountability reduces risks associated with the lack of democratic accountability, i.e., the regulatory capture. The following accountability measures can be outlined based on the evaluation of the experiences of the regulatory authorities in the EU member states: 1) reasoned justification for decisions and actions, 2) reports on activities of the regulatory authority, and 3) opportunity to challenge the decisions of the regulatory authority. An informal method of accountability, when provisional solutions are discussed with the stakeholders, may also be used. The measures also depend on the type of institution reported to. For instance, annual reports may be presented to the institutions of legislative or executive power and answers may be provided to the questions raised. Consultations, impact assessments and cost-benefit analyses are provided to regulated undertakings. Accountability to consumers and society takes the form of dissemination of information, management of complaints and education of consumers. These measures are accompanied by the judicial oversight, i.e. the opportunity to challenge the decisions of the regulatory authorities in court and the responsibility of regulators for violations of the law.

The transparency principle requires the gas market regulation process to be accessible to all interested parties, i.e., the parties should be able to receive all information about the expected decisions, submit proposals, and participate in discussions and consultations. Some Anglo-Saxon countries (e.g., Great Britain and Ireland) have adopted codes of best consulting practices.⁶ The transparency of decisions of the regulatory authorities is achieved by using various procedural norms.

2. Legal Status of the Commission and Possible Methods to Correct the Deficiencies Found

Article 17(1) of the Law on Energy states that the Commission is a budgetary institution accountable to the Parliament (*Lith. Seimas*). The Commission performs functions assigned by the state, such as control and supervision of the activities regulated by the state and municipalities. The authors claim that the purpose of the Commission in the article is defined incorrectly, because the state and municipalities cover a wide range of regulated activities. Point 5 of the Commission Regulations, adopted by the Government resolution No. 1747⁷ of 7 November 2002 establishes the main task of the Commission more precisely. It states that the main task for the Commission is to oversee electricity, natural gas, heat, and water markets. The Commission consists of five members. Its chairman and the four members are appointed and dismissed from office by the Parliament upon the proposal of the President of the Republic of Lithuania. The chairman of the Commission appoints a deputy chairman selected from the appointed Commission members. Upon expiry of the relevant term, the chairman of the Commission and the members of the Commission serve until the appointment of a new chairman and its members. Prior to 25 November 2008, the chairman of the Commission and members of the Commission were appointed for the term of 5 years and removed from office by the President upon the proposal of the Prime Minister.⁸ Such procedure of appointment and dismissal is set by point 9 of the Commission Regulations; however, this point contradicts with Article 17(2) of the Law on Energy. Until amendment of the law the status of the members of the Commission, whose term of office has expired, was not clear. On several occasions the members of the Commission had to serve after their term of office has ended. For instance, on 12 April 2007 the term of office of the members appointed on 12 April 2002⁹ ended; however, the new Commission took office only on

6 Interim Report for the Study of the Powers and Competencies of Energy and Transport Regulators [interactive]. 2006 [accessed 03-03-2010]. <<http://www.europe-economics.com>>.

7 Resolution of the Government of the Republic of Lithuania of 7 November 2002 No. 1747 “On approval of the regulations of the National Control Commission for Prices and Energy”. *Official Gazette*. 2002, No. 109-4819; 2007, No. 23-877.

8 This norm was amended by the Law amending Articles 2, 4, 6, 16, 17, 21, 27, and 28 of the Law on Energy and supplementing the law with Article 7¹ and amending and supplementing its annex of 6 November 2008 No. X-1767. *Official Gazette*. 2008, No. 135-5228.

9 Resolution of the Government of the Republic of Lithuania of 7 November 2002 No. 1747 “On approval of the regulations of the National Control Commission for Prices and Energy”. *Official Gazette*. 2002, No. 109-4819; 2007, No. 23-877.

18 September 2007¹⁰, because the Prime Minister did not submit the proposal regarding the new members to the President in time. Such practice, when state officials remain in office after their term of office expires, should be evaluated negatively. Article 17(4) of the Law on Energy provides the following exhaustive list of cases when the chairman of the Commission and its members are to be dismissed: 1) upon expiry of their term of office, 2) upon their resignation, 3) when elected or appointed to another position, 4) when a conviction rendered against them becomes effective, 5) when it transpires that they have committed a grave breach of the requirements for the position held, 6) for violation of official ethics, 7) when they are no longer able to hold the position for health reasons, and 8) upon loss of the nationality of the Republic of Lithuania.¹¹

The provisions mentioned above (the absence of a direct subordinate relationship with the institutions of the executive branch of power, clearly regulated procedure of appointment and dismissal of the chairman of the Commission and its members, the length of term of office) essentially ensure the Commission's independence from the institutions of the executive power. On the other hand, the independence of the Commission is limited by the fact that its activities are financed from the state budget, which is influenced by the political institutions – the Parliament, the Government and the Ministry of Finance, which are directly involved in forming the state budget. The National Audit Office in its report of 22 December 2007 No. VA-P2-20-23-17 stated that one of the most important aspects of the independence of a market supervisory authority is the financing, which comes not from the state budget, but from the market participants; financing from sectoral taxes ensures a higher degree of independence and saves the state funds.¹² To minimize the intervention of political institutions, it is advisable to take advantage of the experiences of the EU member states' regulatory institutions analysed in the first section of the article and to establish by law at least a few alternative financing options, e.g., an established percentage of turnover of regulated undertakings or licence fees. It is also possible to take advantage of funding practices of other Lithuanian market supervision authorities, for example, the Insurance Supervisory Commission and the Communications Regulatory Authority. The Commission would then be able to hire qualified experts, to improve the qualification of already employed specialists (their qualification would become comparable to the one of the specialists employed by regulated undertakings), and to avoid the information asymmetry problem.

The Commission performs functions that have a significant impact on consumers, energy companies and the overall economic situation in Lithuania. The Commission controls: 1) conditions of licensed activities of system operators, 2) operating costs of regulated activities of gas undertakings, 3) information presented by system operators

10 Decree of the President of the Republic of Lithuania of 18 September 2007 No. 1K-1116 "On appointment of the chairman and the members of the National Control Commission for Prices and Energy". *Official Gazette*. 2007, No. 100-4055.

11 Law on Energy of the Republic of Lithuania. *Official Gazette*. 2002, No. 56-2224; 2003, No. 69-3118; 2008, No. 135-5228; 2009, No. 10-352.

12 Report of the National Audit Office of 22 December 2007 No. VA-P2-20-23-17 [interactive]. [accessed 04-03-2010]. <http://www.vkontrole.lt/veikla_ataskaitos_archyvas.php?v.>.

for the interested parties about the conditions of access to the system, gas pipelines, and natural gas storage facilities, 4) right of access to the system, 5) unbundling of accounts, which is implemented to avoid the cross-subsidization of activities, 6) compliance with the rules on administration and capacity allocation of connecting pipelines. The Commission performs these supervisory functions together with the regulatory authority of the EU member state where a connecting pipeline is built 7) periods of connection and repair works performed by transmission and distribution system operators 8) compliance with the requirements of gas supply reliability and quality of service, and 9) transparency of natural gas undertakings and the level of competition.¹³ The Commission also sets price ceilings, coordinates the investments of gas undertakings and performs other statutory functions.

Given the importance and the complexity of the aforementioned functions and following the evaluation of the best practices of the regulatory authorities of the EU member states, it is necessary not only to ensure adequate financing of the Commission but also the implementation of transparency and accountability requirements. It is also necessary to establish appropriate qualification requirements for the members of the Commission. Article 17(2) outlines only two requirements, which are 1) impeccable reputation of the member, and 2) university degree or equivalent education. The authors are of the opinion that a requirement of legal or economic education should be established, because specialized knowledge is required in the work duties of the members of the Commission. The Commission performs not only economic regulatory functions, but also, within the framework of pre-litigation procedure, deals with complaints regarding the activities of energy undertakings while supplying, distributing, transmitting and storing energy. The Commission addresses issues regarding refusals to allow the right to use the networks and systems, refusals to grant access, balancing of energy flow, and application of pricing and tariffs. The Commission also protects the breached interests of consumers, imposes economic sanctions on energy undertakings, and performs other functions.

To ensure transparency of the Commission's activities, the following measures are adopted: possibility of public hearings, publicity of Commission's meetings, publication of meeting agendas, materials and draft decisions on discussed questions on the Commission's website. The preparation of methodologies and rules involves several stages, during which the comments and suggestions of the stakeholders are discussed and evaluated. When the Commission adopts an important decision, the General affairs department together with other departments of the Commission must prepare a commentary. All interested parties are provided with the opportunity to receive information on expected legislative proposals, to put forward proposals, and to participate in discussions. Two forms of accountability of the Commission personal and institutional is required by the Law on Energy. Article 17(9) of the Law on Energy states that the Commission is responsible for its decisions, which are taken by a recorded vote, and may be appealed against. The principle of institutional accountability is implemented through

13 Law on Natural Gas of the Republic of Lithuania. *Official Gazette*. 2000, No. 89-2743; 2007, No. 43-1626.

the annual activity reports, which are prepared within four months after the end of the calendar year. The report is made public and submitted to the President, the Parliament and the Government.¹⁴ The Lithuanian annual report on electricity and natural gas markets is submitted to the European Commission as well.

The mentioned provisions are essentially in line with the requirements of transparency and accountability of EU member states regulators' best practices. On the other hand, it is recommended to strengthen and improve the Commission's control of undertakings in the energy, including gas, sector. The Resolution of 25 September 2009 No. O3-140¹⁵ approved the structure of the Commission. The Commission does not have a control department, and thus the functions of licensing, preparing of methodologies for pricing of energy resources, and supervision of compliance with the terms of licenses are exercised by the personnel of the main units. Furthermore, in accordance with the specific energy sectors' licensing rules (electricity, natural gas and heating), the Commission must examine how energy undertakings comply with their license terms at least once a year (also upon receiving a complaint). It is impossible, however, to carry out such examinations due to the lack of human and financial resources and due to the high number of energy undertakings (the corresponding licenses are granted to about 40 electricity undertakings, 15 natural gas undertakings, and more than 50 heating undertakings). Such practice of the Commission does not comply with the principle of separation of licensing and supervision of compliance with license terms functions, which is established in point 18 of the Methodological guidelines on licensing of commercial economic activities, and approved by the Government Resolution of 15 March 2004 No. 274, which states that: "If the same institution issues licenses and performs supervision of the licensed activity, these functions should be transferred to separate structural units (in exceptional cases – to different state officials), which/who are independent in the context of adoption of licence issuing decisions."¹⁶ Therefore, a high probability of corruption remains. The authors believe that assets managed by energy undertakings, the scope of provided services, the number of consumers, the impact of the energy prices on growth, the changes in price level, and other criteria imply the urgent need to strengthen the control of energy undertakings by creating the legal and factual premises for the Commission to use human and financial resources adequate to carrying out this function. Only then it would be possible to guarantee a more effective economic regulation of the natural gas market and the better balance of interests between consumers and gas undertakings.

14 Law on Energy of the Republic of Lithuania. *Official Gazette*. 2002, No. 56-2224; 2003, No. 69-3118; 2008, No. 135-5228; 2009, No. 10-352.

15 Resolution of the National Control Commission for Prices and Energy of 25 September 2009 No. O3-140 [interactive]. [accessed 04-03-2010]. <<http://www.regula.lt/lt/apie/struktura/>>.

16 Resolution of the Government of the Republic of Lithuania of 15 March 2004 No. 274 "On approval of the methodological guidelines on licensing of commercial economic activities". *Official Gazette*. 2004, No. 41-1333.

Conclusions

1. The imperfections of the legal regulation of the Commission's legal status result in negative effects on the economic regulation of Lithuanian natural gas market, such as the distortion of the balance of interests between customers and gas undertakings.

2. The three basic requirements for a new type of regulatory body are autonomy, authority and accountability.

2.1. Upon the evaluation of the experiences of the EU member states, the authors conclude that the regulator is independent if its legal status has the following elements: 1) the regulator acts autonomously from the executive power structure, 2) the heads of the regulatory institution are appointed for the period specified by law and are dismissed from office only on the basis of an exhaustive list of circumstances, and 3) the regulator is financed by sectoral taxes and is not influenced by politicians.

2.2. The independence of the regulatory authority is not absolute and must be combined with principles of accountability and transparency.

3. The absence of a direct subordination relationship with the institutions of the executive branch of power, clearly regulated procedure of appointment and dismissal of the chairman of the Commission and its members, the length of term of office essentially ensures the Commission's independence from the institutions of the executive branch of power. In order to minimize the intervention of political institutions, the authors advise to take advantage of the experiences of the EU member states' regulatory institutions and to establish by law at least a few alternative sources of financing of the activities of the Commission (state budget and (or) established percentage of turnover of regulated undertakings companies, licence fees, among others).

4. Given the importance and the complexity of the Commission's functions, the authors propose to establish in the Law on Energy the requirements of special legal or economic education for the candidate members of the Commission.

5. The assets managed by energy undertakings, the scope of provided services, the number of consumers, the impact of the energy prices on growth, the changes in price level, and other criteria imply the urgent need to strengthen the control of energy undertakings, creating the legal premises for the Commission to use resources adequate to carrying out of this function. The authors propose to establish in the Law on Energy the right of the Commission to employ qualified specialists and the obligation to comply with the principle of separation of functions of licensing and supervision of compliance with license terms. This way it would be possible to guarantee a more effective economic regulation of the natural gas market, the balance of interests between consumers and gas undertakings.

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Annex 1. Type of institution, management appointment and dismissal procedures and length of term of office of regulatory authorities in the EU member states

EU member state	Type of institution	Appointment procedure	Dismissal procedure	Length of term of office
Ireland	Commission	Minister of Communications, Energy and Natural Resources with the consent of the Minister of Finance	Minister for Enterprise, Trade, & Employment due to misconduct or illness	3-7 years (no more than 2 terms. The length of two terms must not exceed 10 years)
Austria	Commission	The government upon proposal of Minister of Economy and Labour appoints 2 members and the President of the Supreme Court selects 1 member from three candidates	Other members, if a member misses more than 3 consecutive sessions, or if the member can no longer can serve in the Commission	5 years (number of terms of office is not limited)
Belgium	Commission	Government	Not regulated	Board – 6 years, Council – 3 years (number of terms of office is not limited)
Czech Republic	Agency	Government	Government due to illness or breach of professional ethics of the member. The member can be dismissed by court decision as well	5 years
Denmark	Commission	Minister	Impossible to dismiss	4 years
United Kingdom	Commission	Minister	Minister due to inability of the member to perform duties or misconduct	5 years
Estonia	Agency	Minister of Economic Affairs & Communication, taking into account the recommendation of the State Civil Service Selection and Evaluation Committee	Minister of Economic Affairs and Communication according to the Law on Civil Service	Not regulated
Greece	Commission	The president and two vice-presidents are appointed by the Government upon proposal of Minister of Development,, the other members – by the Minister of Development	The member is dismissed if he/she commits an offence, for which the equivalent punishment is the denial of the right of work as civil servant	5 years (no more than 2 terms)
Spain	Commission	The King upon proposal of the Minister of Industry, taking into account the opinion of the committee of Lower House of Parliament	Government upon proposal of Minister of Industry due to inadequacy for the office or court decision regarding the abuse of power	6 years (no more than 2 terms)

Italy	Commission	President upon proposal of Council of Ministers, approved by Parliament upon proposal of Minister of Industry	The court, when engaged in professional or consultancy activities, appointed to another position or has interests in the regulated sector	7 years (only 1 term)
Cyprus	Commission	Government upon Parliament approval	Government due to mental or physical disability, misconduct, or membership or office incompatible with the regulator's office, court decision	6 years (no more than 2 terms)
Latvia	Commission	Parliament upon recommendation of special commission	Parliament upon Government recommendation due to illness, when the member does not perform functions for more than six months, engage in professional or consultancy activities, or takes another position	5 years (number of terms of office is not limited)
Poland	Agency	Prime Minister upon proposal of Minister of Economy	Prime Minister due to ultra vires actions or abuse of power, court decision or illness	5 years (number of terms of office is not limited)
Luxemburg	Commission	The Grand Duke upon proposal of Government	Grand Duke: management – due to disagreement, individual members – due to inadequacy	5 years (number of terms of office is not limited)
Malta	Commission	Minister for Resources	Minister for Resources due to inadequacy for office	1-3 years (the change of ministers is taken into consideration)
Netherlands	Commission	Minister of Economic Affairs	Minister of Economic Affairs due to lack of competence or other important reasons	Chairman – 6 years, members – 4 years (second term should be no longer than 4 years)
Portugal	Agency	Government upon proposal of Minister of Economy	Government due to abuse of powers	5 years (no more than 2 terms)
France	Commission	President of the Republic – Chairman and 1 member; President of National Assembly – 2 members; President of Senate – 2 members; President of Economic and Social Council – 1 member.	Forced resignation due to an engagement in professional or consultative activities, or if the member takes another post	6 years
Slovakia	Commission	President, upon proposal of 3 members by Parliament and 3 members by Government	President, due to moral and professional inadequacy, membership in other organizations which are incompatible with the office, violation of prohibition to work in regulated sectors	7 years (only 1 term)

Slovenia	Agency	Government upon proposal of minister - agency council members, Government upon proposal of the agency council – agency director	Government, due to inadequacy for office, violation of restrictions on working in regulated sectors, owns equity in regulated sectors, has been sentenced with imprisonment, illness	5 years (number of terms of office is not limited)
Finland	Agency	Government upon proposal of Minister of Trade and Industry	Minister of Trade and Industry in accordance with the Law on State Public Service	Not regulated
Sweden	Agency	Government	Impossible to dismiss	6 years (number of terms of office is not limited)
Hungary	Agency	Prime Minister upon proposal of Minister of Economy and Transport	Prime Minister upon proposal of Minister of Economy and Transport due to inadequacy for office, court decision, conflict of interests, threats to institution activity	6 years (number of terms of office is not limited)
Germany	Agency	President upon submission of Government upon proposal of Advisory Council – the President and 2 vice-presidents; Government upon proposal of Bundestag and Bundesrat – Advisory Council members (16 members each)	President and 2 Vice Presidents may resign voluntarily or upon request of the Government, which is expressed upon proposal of Minister of Economy and Technology coordinated with the Advisory Council	5 years (number of terms of office is not limited)

Source: International Energy Regulation Forum [interactive]. 2006 [accessed 03-03-2010]. <<http://www.worldforum2006.org>>.

SVARBIAUSI GAMTINIŲ DUJŲ RINKĄ REGULIUOJANČIŲ INSTITUCIJŲ TEISINIO STATUSO ELEMENTAI LIETUVOJE IR KITOSE EUROPOS SĄJUNGOS VALSTYBĖSE NARĖSE: LYGINAMOJI ANALIZĖ

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Santrauka. Straipsnyje lyginamuoju aspektu analizuojami svarbiausi gamtinių dujų rinką reguliuojančių institucijų teisinio statuso elementai Lietuvoje ir kitose Europos Sąjungos (toliau – ES) valstybėse narėse. Straipsnis sudarytas iš įvado, dviejų dalių ir išvadų.

Pirmoje dalyje nagrinėjami, autorių nuomone, svarbiausi gamtinių dujų rinką reguliuojančių institucijų teisinio statuso elementai Europos Sąjungos valstybėse narėse: nepriklausomumo lygis (institucijos tipas, vadovybės skyrimo ir atleidimo tvarka, kadencijos trukmė, finansavimo šaltiniai), atskaitomybės, skaidrumo, interesų konfliktų prevencijos užtikrinimo

priemonės. Daroma išvada, kad reguliuojanti institucija laikytina nepriklausoma, jei ji atitinka šiuos teisinio statuso elementus: 1) veikia turėdama autonomiją nuo vykdomosios valdžios struktūros ir sektorinių interesų; 2) šios institucijos vadovai skiriami įstatymuose nustatytam terminui, iš pareigų atleidžiami tik atsiradus įstatyme baigtinius sąrašus nurodytoms aplinkybėms; 3) finansuojama iš sektorinių mokesčių ir nepatiria politikų ir reguliuojamų įmonių įtakos atlikdama reguliavimo funkcijas. Pabrėžiama, kad reguliuojančios institucijos nepriklausomybė nėra absoliuti ir turi būti derinama su atskaitomybės ir skaidrumo principais.

Antroje straipsnio dalyje analizuojami Valstybinės kainų ir energetikos kontrolės komisijos (toliau – Komisija), kuriai įstatymais pavesta atlikti gamtinių dujų sektoriaus kontrolės ir reguliavimo funkcijas, teisinio statuso ypatumai. Tiesioginio pavaldumo ryšių su vykdomosios valdžios institucijomis nebuvimas, aiškiai reglamentuota Komisijos pirmininko bei narių skyrimo ir atleidimo iš pareigų tvarka, kadencijos trukmė iš esmės užtikrina Komisijos nepriklausomumą nuo vykdomosios valdžios institucijų, tačiau Komisijos nepriklausomumą riboja jos veiklos finansavimas iš valstybės biudžeto. Siūloma pasinaudoti ES valstybių narių reguliuojančių institucijų patirtimi ir įstatymu įtvirtinti Komisijos veiklos finansavimą bent iš kelių alternatyvių šaltinių: valstybės biudžeto ir (ar) nustatyto procento nuo reguliuojamų įmonių apyvartos, rinkliavų už licencijas ir pan. Autorių nuomone, teisinio reguliavimo ta apimtimi, kiek jis susijęs su Komisijos teisiniu statusu, netobulumas neigiamai veikia Lietuvos gamtinių dujų rinkos ekonominio reguliavimo efektyvumą, sudaro galimybes iškreipti vartotojų ir dujų įmonių interesų pusiausvyrą. Atsižvelgiant į Komisijai priskirtų funkcijų svarbą ir sudėtingumą, siūloma Energetikos įstatyme nustatyti bent specialaus teisinio ar ekonominio išsilavinimo reikalavimą asmenims, pretenduojantiems tapti Komisijos nariais, taip pat stiprinti energetikos įmonių kontrolę, sudarant Komisijai teises prielaidas pasitelkti šiai funkcijai vykdyti adekvačius išteklius. Siūloma Energetikos įstatyme nustatyti Komisijai teisę samdyti kvalifikuotus atitinkamų sričių specialistus ir pareigą laikytis licencijų išdavimo ir licencijų sąlygų priežiūros funkcijų atskyrimo principo. Taip būtų sudarytos galimybės užtikrinti efektyvesnę gamtinių dujų rinkos ekonominę reguliavimą, vartotojų ir dujų įmonių interesų pusiausvyrą.

Reikšminiai žodžiai: gamtinės dujos, gamtinių dujų rinka, reguliavimas, reguliuojanti institucija, teisinis statusas, Valstybinė kainų ir energetikos kontrolės komisija.

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