

# INTRODUCTION

## 1. The objective and the research method

The objective of this work is to analyse the legal regulation of the energy sector (sector regulation for the energy sector) in Ukraine through the reference to the energy sector regulation in the European Union and to formulate conclusions within the scope of making these systems similar.

The first fundamental problem which must be solved is determining how to understand the sector-specific regulation term in our times, in particular in Europe (in the EU). This issue, which has a theoretical and cognitive nature, is a specific basis for further considerations within the definite and detailed legal solutions in both indicated systems.

The aims (values) and particular legal measures (instruments) of the state intervention occurring in the said legal regulations are determined in the course of the research. The arrangements within this scope allow to compare the development degree of these regulations and chiefly enable obtaining a response to a question about differences and similarities in the energy sector regulation in Ukraine and the European Union. What is important here is obtaining a response to a question about the similarity degree of the energy sector regulation in Ukraine and in the European Union, in particular with consideration of the provisions of the Association Agreement concluded between the European Union and its member states and Ukraine of 21 March 2014. A question which must be answered concerns the state of the harmonisation process of the Ukrainian provisions regulating the energy sector with the original and secondary law of the European Union.

The initial assumption of the research is the differentiation of four basic objectives of the energy sector regulation. The first basic objective of the modern regulation of the network infrastructure, which is the electricity sector and the natural gas sector, is to implement and support the widely-understood economy rules (effectiveness, efficiency, functioning, demand and supply, market competition). The second objective of the sector-specific regulation is to protect, in a broad sense, the consumers' interests (customers in households, including sensitive customers) and their social welfare (the social aims of the regulation). The third objective is to

guarantee the energy security understood as the certainty of the delivery and supply with natural gas and electricity, including the technical security of the transmission and distribution systems of these goods. The fourth and the last objective is to guarantee the natural environment and climate protection (pro-ecological objectives).

The subsequent theses of the work may be formulated as follows: regulation is a functional and dynamic structure changing in time and subject to evolution (modernisation); the contemporary sector regulation is regulation for the market, which replaces the previous traditional market regulation (hence new regulation objectives, not present previously, such as social objectives, energy security, environment and climate protection); regulation is characterised by particular and specific legal measures (instruments), not found in other types of the state interventionism provisions; both the objectives of the modern regulation, as well as the measures become universal, they are accepted and applied in the various legal systems of the countries worldwide, whose example is the process of accepting and implementing the EU's solutions into the legal system as part of the regulation of the energy sector by Ukraine.

The basic method in the research is an analytical method (analytical philosophy)<sup>1</sup>, with particular consideration of the recent achievements of semiotics as well as deontic logics within the scope of studying legal texts (norms, terms).

Furthermore, a legal comparative method (comparative literature) is also applied in the field of the research within the positive law of the European Union and Ukraine. The sector-specific regulation (the sector-specific regulation law) binding in the European Union (at the level of the EU's law) and the national law of Ukraine are also compared. The comparative research also involves both the treaty provisions (the primary law of the European Union) and the constitutional provisions (Ukraine), as well as the European Union's secondary law and legislative acts and lower order acts (sub-legislative) of Ukraine. The legal and state institutions of the European Union and Ukraine are analysed and compared.

The scientific literature undergoes critical assessment, chiefly legal literature but also economic and political one. The legal literature includes monographs, collective works, articles in scientific magazines and scientific and popular science publications, the Internet sources within the public economic law, or more narrowly, the sector-specific regulation laws and those from other legal fields. The literature used comprises mostly English, Polish and Ukrainian literature.

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<sup>1</sup> At present, this is the initial constituent of a formal and dogmatic method.

of the energy sector in the European Union and in Ukraine. The comparison of the objectives and the legal measures of the energy sector regulation” under the supervision of this monograph’s author. Conducting the research whose outcome is this study is possible owing to the implementation of the first outcome of the indicated scientific project, i.e. the preparation and publication of “The energy law of Ukraine. Selected sources” edited by this monograph’s author (UAM Scientific Publication House, Poznań 2018, pp. 789), including the translations of the fundamental legal acts of Ukraine within the scope of the regulation of the electricity sector and the natural gas sector.

The work was performed at the Department of Public Economic Law of the Faculty of Law and Administration of Adam Mickiewicz University in Poznań.

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## 2. The subject matter of the research

The content-related part of the work starts with the paper on the views within the concept and theory of the key structure which is the sector-specific regulation (work preparatory stage). This allows to determine conclusions within the said scope and formulate the author’s definition of the sector-specific regulation term.

In this work, the energy sector is understood as the generation (production) and supply of energy, without the processes of obtaining (searching for, detecting and excavating) its sources (the energy sector *sensu stricto*, in the narrow meaning).

The research on the sector-specific regulation of the energy sector are limited to two sectors (sub-sectors) of the energy sector: the electricity sector (the electricity sector) and the natural gas sector. The basic criterion for differentiating these two sectors is the presence, in the said sectors (sub-sectors), of power public goods (collective and protective) which include electricity and natural gas. Furthermore, the basis for the said procedure was a conviction that these selected energy sectors (the electricity sector and the natural gas sector) on the one hand are particularly interesting in terms of a research (the presence of special legal measures) and on the other hand they are exceptionally important in terms of a society (the presence of the aforementioned public goods)<sup>2</sup>, and thirdly they are significantly typical as the network infrastructure sectors; thus, the conclusions drawn on the basis of researching the legal regulation of the said sectors may be applied universally in relation to other network sectors, including those energy ones, and fourthly the

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<sup>2</sup> For instance, the energy poverty phenomenon refers only to difficulty in supplying households (population) with electricity, sometimes also with natural gas, but never in the scope of e.g. liquid fuels.

legal regulation analysis of all the energy sectors would require the considerable increase in the work volume. Whereas, nothing precludes further separate research on the legal regulation of the remaining markets of the energy sector.

The research comprises the provisions of the European Union's primary (treaty) and secondary law, international law (treaties and international agreements) with Ukraine as a party, and the national law of Ukraine.

The work in some places contains references to other energy sectors, such as the liquid fuel (oil) sector or the coal sector, yet this is not a systematic procedure. Basically, the work refers only to the legal regulation of the electricity sector and the natural gas sector of the European Union and Ukraine.

The work is divided into three basic chapters. The first one is devoted to the sector-specific regulation term, concept and theory formation based on various sciences (economics, political science, law). The second content-related chapter refers to the energy sector regulation in the European Union, with the analysis of the development (beginnings) of energy and the energy sector in the European Union (at the community and the European Union level), the first energy sector regulations (treaties establishing the European Coal and Steel Community and the European Atomic Energy Community), the development and subsequent development stages of the joint energy policy of the European Union (including the development of the primary law and the first and the second energy package), the objectives and legal measures of the energy sector regulation in the European Union within the light of the currently valid legal regulations (the third energy package and the climate package and the Energy Union). In the third content-related chapter, the energy sector regulation in Ukraine is analysed, including the abridged discussion of the energy sector in Ukraine (applicable historical and statistical data) and the legal bases of the energy sector functioning in Ukraine are also analysed (the international and national law) as well as the objectives and legal measures of the energy sector regulation in Ukraine. The internal systematics of the second and third chapter, concerning the energy sector regulation in the European Union and Ukraine, results primarily from the catalogue of the assumed four basic objectives (objectives categories) of the current sector regulation (economic and social objectives, energy security and natural environment protection) and secondarily from the accepted limitation of the research on the energy sector regulation to the sub-sectors of electricity and natural gas.

The work is finished with final conclusions which, on the one hand, summarise it, including the scope of the contemporary understanding of the sector-specific regulation term and which, on the other hand, are a final analysis of the state of adapting the energy sector regulation in Ukraine to the regulation in the European Union, at the same time indicating the development tendencies within this scope.