

Specific legal solutions in the field of energy security in the natural gas sector addressed to protected customers of gaseous fuels. Selected issues

Abstract

The state's dependence on the supply of natural gas from external sources requires legislative measures to be taken to protect customers from the negative effects of political and economic events affecting the state's internal security. In the natural gas sector, ensuring energy security and preventing emerging threats is particularly important. The purpose of this article is to present the legal solutions to protect certain groups of customers in the natural gas market and minimise the negative socio-economic effects in the event of an interruption to gas supply or a sudden increase in gas prices. The introduced legal regulations emphasise the unique specificity of the natural gas market, the essential feature of which is its relationship with imports.

Keywords

protected customer of gaseous fuels, energy security, regulation.

Energy security in the *sensu largo* encompasses the interests of all those involved in the trade in energy commodities. On the subjective side, the energy law is the right of anyone who is a participant in the market, which is a platform for the exchange of energy commodities. Participants in the energy market are identified in the *Act of 10 April 1997 - Energy Law* (hereinafter: A.E.L.), which is the most important legal act within the field of the energy law. By correctly defining the participants in the natural gas market, it is possible to determine their role and position in this market.

At the outset, it should be pointed out that the guarantor of energy security is the state, which, through energy companies and public administration bodies, is responsible for shaping and implementing the state's energy policy. Their tasks are directed at ensuring an uninterrupted supply of natural gas to consumers. In the energy company-consumer relationship, the latter is the weaker link, with little decision-making power in its dealings with the professional public utility. In order to safeguard the interests of the natural gas consumer, the state obliges energy companies to act to protect the consumer, which in essence is to ensure an uninterrupted supply to them.

The purpose of this article is to indicate, in the light of the current legal regulations¹, the instruments for the protection of selected groups of gas fuel consumers. This was dictated by the situation on the domestic natural gas market and related international policy.

Recipient of gaseous fuels - characteristics of terms

The legislator seeks to create a competitive natural gas market in such a way that it benefits all its consumers, not forgetting that the primary function of the gas system is to supply small and medium-sized consumers (which make up the transport sector, agriculture, crafts, trade, public utility institutions) and large industrial consumers. The A.E.L. contains definitions of: consumer (Article 3(13) of the A.E.L.), final consumer (Article 3(13a) of the A.E.L.), consumer of gaseous fuel, electricity or heat in a household (Article 3(13b) of the A.E.L.) and sensitive consumer of gaseous fuel (Article 3(13d) of the A.E.L.). The creation of the aforementioned legal definitions is of a cascade nature, they are sub-definitions of the one in Article 3(13) of the A.E.L. The evolution of the notions concerning the institution of the recipient and their adjustment to the changing market reality is directly connected with the ongoing

¹ The article describes the legal status as of 13 August 2022 (editor's note).

transformation of the natural gas market, not only in Poland, but also in the entire European Union (EU).

Pursuant to Article 3(13) of the A.E.L., a consumer is anyone who receives or consumes fuel or energy on the basis of a contract with an energy company. Thus, in order to become a natural gas consumer, it is necessary to conclude a contract with the energy company (a contract for the sale of natural gas and a contract for the provision of transmission or distribution services or a comprehensive contract). It also appears that in the absence of a written form of such a contract, the entity collecting natural gas and paying for it should be deemed to be a customer. The Act does not prejudge at what point an entity becomes a customer. Consumers will not only be the final users of natural gas, but also all users of the gas system and distribution and transmission undertakings. Consumers should exclude those who take natural gas without concluding a contract, e.g. tenants, lessees, tenants of dwellings in multi-apartment buildings whose owner or manager has concluded a contract with the energy company².

Subsequently, the legislator established a definition of a final consumer, i.e. a consumer who purchases fuels or energy for his or her own use, but with regard to natural gas, own use does not include gaseous fuels purchased for consumption for the purposes of transmission, distribution, storage of gaseous fuels, liquefaction of natural gas or its regasification.

In Article 3(13b) of the A.E.L., the legislator defines a household consumer of gaseous fuels, electricity and heat. Separating this group of recipients, which falls into the group of final recipients, is due to granting them certain privileges, such as the right to terminate the contract for the supply of gaseous fuels or energy in a simplified procedure (Article 4j, paragraph 4 of the A.E.L.) and rights related to the establishment of an ex officio seller (Article 5a of the A.E.L.). An element of defining a household consumer of gaseous fuels is the acquisition of household status, which involves the consumption of gaseous fuels exclusively within the framework of the household, excluding the possibility of their further resale. In this sense, the consumption of gaseous fuel by a household occurs by all related or unrelated persons residing in the dwelling, whether living together or not, and not by any other final consumer. Pursuant to Article 4 of the *Act of 21 June 2001 on housing allowances*, a household is understood to be a household run by the person applying for housing allowance who occupies the dwelling independently or

² M. Kraśniewski, B. Pikiwicz, M. Ziarkowski, *Komentarz do art. 3 ustawy – Prawo energetyczne* (Eng. Commentary on Article 3 of the Act - Energy Law), in: *Prawo energetyczne. Ustawa o odnawialnych źródłach energii. Ustawa o rynku mocy. Ustawa o inwestycjach w zakresie elektrowni wiatrowych. Komentarz*, M. Czarnecka, T. Oglódek (eds.), Warszawa 2020, p. 40.

a household run by that person jointly with his or her spouse and other persons permanently residing and managing with him or her, who derive their right to reside in the dwelling from the right of that person.

In Article 3(13d) of the A.E.L., the legislator defined the concept of a sensitive customer of gaseous fuels. This was dictated by the need to protect vulnerable consumers, as expressed in EU directives liberalising the energy market. In relation to this group of recipients, the Act provides for the possibility of their submitting an appropriate application to the energy company distributing gaseous fuels for the installation of a prepayment metering and billing system (Article 6f of the A.E.L.). In addition, only in the case of a sensitive consumer of gaseous fuels, the possibility of granting a lump sum for the purchase of fuel, forming part of the housing allowance, is provided for. It is worth noting that the possibility for vulnerable consumers to benefit from the right to a lump sum for the purchase of fuel is a form of financial support and constitutes an attempt to minimise the negative socio-economic phenomenon of energy poverty³.

It should be noted at this point that the concepts currently in force do not necessarily determine the future personal scope of the energy law, but provide an important point of reference for their distinction. This serves to systematise the rights and obligations of consumers of gaseous fuels⁴. Even such a brief citation of the rights to which a natural gas consumer is entitled leads to the conclusion that it is an entity subject to special protection by the legislator due to its position in the hierarchy of natural gas market participants and, consequently, it is a fundamental subject of energy security in the country. As the most vulnerable participants in the natural gas market, these consumers require special treatment by the state. To this end, new legal regulations are constantly being created to secure their position on the market in relation to specialised entities providing them, as consumers, with a range of services related to the supply of natural gas. The international developments shaping the energy market, especially those determining uninterrupted access to natural gas, and the role that consumers play in this arrangement cannot be overlooked either.

³ See: K. Grzebiela, *Dodatek energetyczny jako środek zapobiegający wykluczeniu energetycznemu - próba oceny polskich rozwiązań prawnych w świetle dyrektyw Parlamentu Europejskiego i Rady nr 2009/72/WE oraz 2009/73/WE* (Eng. Energy supplement as a measure to prevent energy exclusion - attempt to assess Polish legal solutions in the light of Directives 2009/72/EC and 2009/73/EC of the European Parliament and of the Council), in: *Energetyka w odślonach*, D. Ćwik, P. Kwiatkiewicz, R. Szczerbowski (eds.), Poznań 2016, p. 427.

⁴ Cf. A. Szafrński, *Prawo energetyczne. Wartości i instrumenty ich realizacji* (Eng. Energy Law. Values and instruments for their implementation), Warszawa 2014, p. 36.

Protected customer and protected customer in the framework of solidarity support

An example of legislative work to ensure that all necessary measures are in place to guarantee an uninterrupted gas supply across the EU, in particular to protected customers, in the event of severe climatic conditions or supply disruptions is the *Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard security of natural gas supply and repealing Regulation (EU) No 994/2010* (hereinafter: Regulation 2017/1938). Moreover, the EU Regulation introduced a harmonised legal definition of a protected customer. The above measures represent a protection of individual recipients, the most vulnerable to problems resulting from supply disruptions.

The first recital of the aforementioned regulation highlights the importance of natural gas, an element of the EU's energy supply, which is imported from third countries. The EU legislator notes that major disruptions to its supply could have adverse effects on all Member States and the EU as a whole and could severely damage the EU economy and have serious social consequences, especially for vulnerable groups of consumers. The objective of putting measures in place to guarantee an uninterrupted gas supplies in the EU should be achieved through the most cost-effective means and in a way that avoids disrupting natural gas markets. In order to protect vulnerable gas customers who are particularly exposed to the consequences of a gas supply shortage, appropriate provisions have been introduced to safeguard protected customers and those protected under solidarity support.

As defined in Article 2(5) of Regulation 2017/1938, the term protected customer means:

(...) a household customer who is connected to a gas distribution network and, in addition, where the Member State concerned so decides, may also mean one or more of the following, provided that enterprises or services as referred to in points (a) and (b) do not, jointly, represent more than 20% of the total annual final gas consumption in that Member State:

- a) a small or medium-sized enterprise, provided that it is connected to a gas distribution network;
- b) an essential social service, provided that it is connected to a gas distribution or transmission network;
- c) a district heating installation to the extent that it delivers heating to household customers, small or medium-sized enterprises, or essential social services, provided that such installation is not able to switch to other fuels than gas.

Furthermore, Article 2(6) of Regulation 2017/1938 provides a definition of a solidarity protected customer, which is understood to mean:

(...) a household customer who is connected to a gas distribution network, and, in addition, may include one or both of the following:

- a) a district heating installation if it is a protected customer in the relevant Member State and only in so far as it delivers heating to households or essential social services other than educational and public administration services;
- b) an essential social service if it is a protected customer in the relevant Member State, other than educational and public administration services.

The regulation in question is also intended to increase solidarity and trust between EU Member States and to put in place the measures necessary to achieve these objectives, which is closely linked to safeguarding supplies to protected customers. Emphasis should be placed on the inclusion of the principle of obligatory solidarity in the event of a natural gas supply crisis in neighbouring countries. The new regulations go beyond the solutions provided in the earlier *Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 on measures to safeguard security of natural gas supply and repealing Council Directive 2004/67/EC*, which was replaced by Regulation 2017/1938. The new legislation is based on four main pillars:

- 1) solidarity (solidarity between EU countries in crisis situations when all other methods have failed);
- 2) regional cooperation (jointly addressing disruptions and crises in the EU's natural gas supply);
- 3) energy community (EU cooperation with its neighbours to strengthen security of gas supply);
- 4) transparency (verification of the compliance of gas contracts with EU energy law).

The first refers to the introduction of an effective energy solidarity mechanism triggered at the time of energy supply disruptions and directly threatening the security of states. This means that a Member State that has declared an emergency should implement all emergency measures provided for in the Emergency Plan to ensure the supply of natural gas to its solidarity-protected customers.

In order to understand the construct of solidarity, it is necessary to refer to the general Treaty basis for energy, which is Article 194 of the *Treaty on the Functioning of the European Union* (hereinafter: TFEU). Pursuant to Article 194(1)(b) TFEU, in the framework of the establishment or functioning of the internal market and with regard to the need to preserve and improve the environment,

EU policy on energy shall aim, in a spirit of solidarity between Member States, to ensure the security of energy supply in the EU. According to Cezary Mik, the notion of solidarity indicates that Member States are responsible for maintaining a community of interests, objectives and values and, in an environment of economic integration, are increasingly interdependent with each other. As a result of the interconnection of their markets, and in view of the preparation of regulations aimed at creating a common gas market, cooperation between Member States, including the cooperation of neighbouring areas in Member States within the framework of regional cooperation, can enhance individual and collective security of gas supply⁵. The importance of the energy security of natural gas consumers shines through in this arrangement.

The increasing interdependence between Member States should condition the energy security policy of the EU as a whole, in which, as Article 122 TFEU indicates, the Council, on a proposal from the European Commission (EC), may decide, in a spirit of solidarity between Member States, on measures appropriate to the economic situation. This applies in particular to situations of serious difficulties in the supply of certain products, especially in the field of energy. The principle of solidarity proposed by the EC should apply in the event of an energy crisis affecting one or more EU Member States, a crisis caused by a physical threat to energy infrastructure and in the event of a political interruption of supply from third countries. In the EC's view, this includes mutual information on risks and the state of fuel stocks, technical assistance, and the creation of infrastructure to facilitate the flow of gas between Member States. This notion of energy solidarity, together with the anti-crisis mechanism, is identical to the notion of energy solidarity expressed in Regulation 2017/1938. According to Bartłomiej Nowak, it should be recognised that in order for the above-mentioned demands to become a reality, it is necessary to create both a fully functional common gas market and effective competition. For the most part, market mechanisms with the support of independent energy market regulators have the potential to provide the EU with a high level of security of supply to all Member States. Concerted action on security of supply is therefore needed, involving first and foremost transparency, solidarity and non-discriminatory policies in line with the principles of the common market⁶.

⁵ C. Mik, *Solidarność w prawie Unii Europejskiej. Podstawowe problemy teoretyczne* (Eng. Solidarity in European Union law. Basic theoretical issues), in: *Solidarność jako zasada działania Unii Europejskiej*, C. Mik (ed.), Toruń 2009, p. 46.

⁶ B. Nowak, *Solidarność i bezpieczeństwo energetyczne jako elementy polityki energetycznej UE. Wybrane prawne formy realizacji na rynku gazu* (Eng. Solidarity and energy security as elements of EU energy policy. Selected legal forms of implementation in the gas market), "Studia Europejskie" 2014, no. 2, pp. 81–82.

Where an EU Member State has requested a solidarity measure on the basis of Article 13(1) of Regulation 2017/1938, the Member State that is directly connected to the Member State requesting support or, if the Member State so decides, its competent authority or its transmission system operator or distribution system operator shall, as far as possible without creating dangerous situations, take the necessary measures. Their aim shall be to ensure that the supply of gas within its territory to customers other than those protected by solidarity support is reduced or not continued to the extent and for the duration necessary to safeguard the gas supply of the customers protected by solidarity support in the Member State requesting support. The Member State requesting support shall, in turn, ensure the effective supply of an adequate amount of gas on its territory to protected customers under solidarity support.

In contrast, under Article 13(2) of Regulation 2017/1938, a Member State shall provide a solidarity measure to another Member State with which it is connected via a third country, unless flows through the territory of that third country are restricted. At the same time, it is stipulated that the solidarity mechanism is to be used as a last resort and only applicable when the requesting Member State has:

- c) has not been able to cover the deficit in gas supply to its solidarity protected customers despite the application of the measure and despite the lowering of the standards for the supply of the commodity or the additional obligations imposed on the natural gas undertakings,
- d) exhausted all market-based measures and all measures provided in its emergency plan,
- e) notified an explicit request to the Commission and to the competent authorities of all Member States with which it is connected either directly or via a third country, accompanied by a description of the implemented measures,
- f) undertaken to pay fair and prompt compensation to the Member State providing solidarity.

The Member State requesting support shall, after consulting all Member States committed to provide solidarity support, select the most advantageous offer on the basis of cost, speed of delivery, reliability and diversification of gas supply. The Member States concerned shall make such offers on the basis of voluntary demand-side measures to the extent and for as long as possible before resorting to non-market measures. Solidarity ensures cooperation with more vulnerable Member States. Solidarity support under Regulation 2017/1938 is provided on a compensatory basis. The Member State requesting solidarity support shall promptly pay fair compensation to the Member State providing solidarity support or shall ensure its prompt payment.

Regulation 2017/1938 also provides for regional cooperation, which is to include the concept of gas emergency supply corridors in the framework of simulations made by ENTSO-G (European Network of Transmission System Operators for Gas)⁷. Regional cooperation and coordination between groups of Member States sharing a common risk is also strengthened, and mandatory regional preventive action plans and emergency plans are introduced, as well as regional risk assessments to be developed jointly by each Member State within the same risk group. In line with Annex 1 to Regulation 2017/1938, Poland has been assigned to two risk groups due to natural gas supplies from the East, i.e. Belarus and Ukraine.

In summary, the solidarity mechanism is designed to protect protected customers from the suspension of natural gas supplies on Polish territory. This is all the more important when the group of protected customers includes household customers, small and medium-sized entrepreneurs, entities providing basic social services and heat suppliers to households. If market-based measures prove insufficient to address the shortfall in gas supply required, and in view of the importance of solidarity measures of last resort, the Member State providing solidarity support should be able to use non-market-based measures, including a reduction in supply to certain groups of customers, as a second resort in order to be able to meet its solidarity obligations.

A response to the above is the *Act of 16 February 2007 on stocks of crude oil, petroleum products and natural gas and the principles of proceeding in situations of threat to the state's fuel security and disturbances on the oil market* (hereinafter: the Act on stocks), the provisions of which explicitly state that it is from consumers with a high consumption of natural gas that reductions in its demand are expected. The introduction of the instrument of limitations in the off-take of natural gas consists in temporary limitation of the maximum hourly and daily off-take of natural gas on the territory of Poland or its part. In fact, pursuant to Article 58(4) of the Act on stocks: *restrictions resulting from plans to introduce restrictions do not apply to natural gas customers in households*. The status of protected customers does not allow energy companies to apply natural gas off-take restrictions to them.

Significantly, in 2019, work began on the government's draft of a new regulation on the manner and procedure for introducing restrictions on natural

⁷ European Network of Transmission System Operators for Gas - an EU organisation established in 2009 by the operators of European transmission systems. EU TSOs work together to promote the completion of the internal market in natural gas and cross-border trade in natural gas, as well as to ensure optimal management and operation of the natural gas transmission network, including its appropriate technical development. After: Ministerstwo Klimatu i Środowiska, <https://www.gov.pl/web/klimat/europejska-siec-operatorow-systemow-przesylowych-gazu-entso-gazu-> [accessed: 20 III 2022] – editor's note.

gas off-take. The primary objective of this work was to increase the effectiveness of the mechanism for introducing restrictions on natural gas off-take, which is one of the two main measures against supply disruptions. The above was to be achieved by extending restrictions on natural gas off-take to a larger group of customers not classified as protected customers. Carrying out such a classification required the establishment of a definition of the concept of protected customer.

On 10 April 2021, the *Ordinance of the Council of Ministers of 17 February 2021 on the manner and procedure for introducing restrictions on natural gas off-take* entered into force. It regulates the matter of restrictions on natural gas off-take in line with regulatory requirements and changed market conditions resulting from the government's supply diversification policy. It also aims to tidy up and streamline the mechanism for the introduction of restrictions on natural gas off-take, which is a non-market measure that can be applied in the event of an emergency, and to facilitate the application of the regulation's provisions by operators and natural gas consumers. The relevant restrictions are intended to ensure a secure supply of natural gas to protected customers.

In § 4(1), this regulation introduces the definition of a group of protected customers who are not subject to restrictions. In order to ensure the readability and clarity of the new regulations, it was decided to define this catalogue from the negative side. Given the large number of entities covered by the definition of protected customer, it is unjustified to refer to each of them individually here, but it is nevertheless worth listing them enumeratively. The entities recognised as protected customers are:

- 1) natural gas customers in households,
- 2) entrepreneurs whose contracted capacity does not exceed 710 kWh/h, connected to the gas distribution network,
- 3) entities connected to the gas distribution or transmission network:
 - a) healthcare providers,
 - b) organisational units of social welfare,
 - c) night and heating shelters,
 - d) organisational units of family support and foster care system,
 - e) units of the National Medical Rescue System and units cooperating with that system,
 - f) entities constituting an element of the educational system, including among others kindergartens and schools,
 - g) public administration bodies and offices servicing them,
 - h) entities operating crèches and children's clubs,
 - i) water and sewage companies,
 - j) entities responsible for waste management,

- 4) natural gas consumers, insofar as they are engaged in the production of heat for a consumer taking heat in the period from 1 September to 31 May, for central heating, domestic hot water, ventilation and technology in the form of steam and hot water, or in the supply of heat to that consumer, provided that the installations of those natural gas consumers cannot be supplied with fuel other than natural gas.

It should be signalled that the guarantee of the supply of natural gas to protected customers in the contracted quantities, despite the restrictions on its consumption, will be ensured by the supplier of natural gas to protected customers communicating to the relevant operator or energy company information on the quantity of natural gas that is necessary for the supply of its protected customers⁸.

In addition, the ordinance includes the adjustment and differentiation of supply degrees (from the first to the twelfth) and the establishment of rules for informing customers of the possible application of consumption restrictions. The introduced eleventh and twelfth supply degrees correspond to the zero hourly and daily amount of natural gas taken at a given exit point from the gas system by a customer, including a protected customer. The applicable supply degrees shall be compulsorily announced to the public 10 hours in advance. This information is announced in the radio energy announcements on the Polish Radio 1 programme and on the websites of these operators.

Limitations shall be implemented in a manner that ensures the safe operation of the gas system, as well as guaranteeing the safety of persons and avoiding the risk of damage or destruction of technological facilities by enabling customers to adapt the operation of their gas installations to the reduced consumption of natural gas. Their introduction shall take place in accordance with limitation plans. The obligation to develop such plans, which stems from Article 58 of the Act on stocks, is vested in the operators of the following systems: transmission, distribution and interconnected gas systems or energy enterprises acting as operators. These plans specify the maximum hourly and daily volumes of natural gas consumption by individual customers connected to their network, for individual supply degrees. These volumes become an integral part of sales contracts, contracts for the provision of natural gas transmission or distribution services and comprehensive contracts.

⁸ *Draft ordinance of the Council of Ministers on the manner and procedure for introducing restrictions in the off-take of natural gas*, Service of the Republic of Poland, <https://www.gov.pl/web/premier/projekt-rozporzadzenia-rady-ministrow-w-sprawie-sposobu-i-trybu-wprowadzania-ograniczen-w-poborze-gazu-ziemnego2> [accessed: 4 VIII 2022].

Entities covered by tariff protection

Attention should be drawn to the regulations of the *Act of 26 January 2022 on special solutions for the protection of gas fuel consumers in connection with the gas market situation*. The explanatory memorandum to the draft of this Act shows that it is intended to allow (...) *the activation of extraordinary instruments to enhance Poland's energy security and, in the short term, to support households, residents of multi-apartment buildings, as well as certain sensitive consumers*⁹. At the same time, the need to minimise price increases of gaseous fuel for the most vulnerable consumers was noted, as well as to increase the energy security of the state by guaranteeing the continuity of natural gas supplies to consumers and ensuring an appropriate level of liquidity to gas companies in order to timely settle obligations related to ensuring liquidity on the exchange market, continuity of energy supplies or remaining in readiness to provide services of an ex-officio supplier of gaseous fuel. As part of the implementation of the above demands, there is a need for specific solutions to take measures to minimise the negative socio-economic effects associated with a sudden, sharp increase in natural gas prices on the market.

The legislator, in order to protect household consumers from a surge in natural gas prices, decided to introduce into the A.E.L. a mechanism for spreading the increase in natural gas tariff prices over time (Article 62f of the A.E.L.). In addition, further measures have been taken to protect natural gas consumers who are particularly vulnerable to the effects of natural gas price increases and to take into account the fact that these entities are protected in the economic situation of energy companies trading in gaseous fuels. The mechanisms introduced are aimed at protecting customers in households, customers of natural gas in multi-apartment buildings who have not concluded individual comprehensive contracts or natural gas purchase contracts with energy companies, as well as customers carrying out public utility tasks, while at the same time introducing compensation for gas sellers selling to tariff customers.

In line with the above provisions, by the Act of 26 January 2022 on special solutions for the protection of gas fuel consumers, the catalogue of entities covered by tariff protection was expanded. To the list of household gas fuel consumers were added:

- 1) housing communities referred to in the Act of 24 June 1994 on the ownership of premises, or housing cooperatives referred to in the Act of 15 December 2000 on housing cooperatives;

⁹ *Government draft act on special solutions for the protection of gas fuel consumers in connection with the gas market situation*, Print no. 1902 of 2022.

- 2) customers other than those indicated above who, by virtue of a law, contract or other legal title, are entitled or obliged to provide gas fuel in residential premises for household consumption, in the premises of the entities referred to below (see point 3), to the extent that they consume gaseous fuel for the purposes specified in the Act or for the local production of heat consumed by households located in multi-family buildings or on the premises of the entities referred to below (see point 3), subject to the submission of the declaration referred to in Article 62 ba u.p.e;
- 3) other entities carrying out public utility tasks¹⁰, provided that they submit the declaration referred to in Article 62 bb A.E.L.

In order to obtain tariff protection, it will be necessary for these entities to submit the declaration referred to in Article 62 ba of the A.E.L. and Article 62 bb of the A.E.L., respectively, concerning the determination of the estimated proportion of gaseous fuel consumed for purposes covered by tariff protection and exempted from administrative price control. These declarations should be made prior to the conclusion of the contract for the sale of gaseous fuel or the comprehensive contract with the seller. For contracts in force on the date of entry into force of the Act, i.e. 29 January 2022, a 45-day period is provided for the submission of a declaration in order to obtain a price corresponding to the tariff with effect from 1 January 2022. The content of the declaration referred to in Article 62 ba A.E.L. and Article 62 bb A.E.L., respectively, is to consist of:

- a declaration of fulfilment of the conditions for qualification as a consumer group,
- indication of data used to determine the estimated fraction of gaseous fuel that will be consumed for the customer's needs specified in the content of the act,
- determine the estimated fraction of gaseous fuel that will be consumed for the needs described above.

The declarations submitted make it possible not only to identify the customers subject to tariff settlements, but also to determine the proportion of gaseous fuel consumed for purposes covered by tariff protection and exempted from administrative price control. Determination of the estimated part of the gaseous fuel is to be made by the consumer, in accordance with the principles indicated in Article 45a of the A.E.L. or taking into account the area of residential and

¹⁰ These include, among others, entities providing publicly funded healthcare services, organisational units of social welfare, night and heating shelters, organisational units of family support and foster care system, entities of the educational system, churches and other religious associations, entities conducting cultural activities.

commercial premises, the nature of the business conducted therein and the historical data available. Specifying in the declaration the consumption of gaseous fuel for unprotected needs in a manner that blatantly contradicts these guidelines entails liability towards the seller of gaseous fuels.

It is important to emphasise that the legislator should extend tariff protection to household consumers of gaseous fuel, housing communities and cooperatives, regardless of whether they submit a declaration concerning the part of gaseous fuel consumed for the needs of consumers entitled to such protection. These entities will therefore be subject to a special legal regime designed to counteract the effects of omissions on the part of the managers of the communities or cooperatives to which the dwellings belong. In order to ensure that the gas seller is properly informed about the part of the gaseous fuel that should be covered by the tariff, the managers of housing communities and cooperatives will at the same time be obliged to make such a declaration. However, failure to do so will not have negative consequences for residents, but only for those responsible for failing to comply with the obligation. In the event of negligence, managers will be held civilly and criminally liable. With regard to other customers, failure to submit the declaration will result in non-application of tariff protection to them.

In addition to extending the catalogue of entities covered by tariff protection until 31 December 2023 to include certain categories of customers who are entities performing public utility tasks (including hospitals, schools, crèches, kindergartens, night shelters), the Act of 26 January 2022 introduced a compensation mechanism for natural gas sellers to tariff customers, which would serve to compensate for the effects of the price freeze on the extended catalogue of tariff customers. The act also introduced the so-called price freeze mechanism for gaseous fuels at the level of prices contained in the tariff of the ex-officio seller, i.e. PGNiG Obrót Detaliczny (Article 62c(1) A.E.L.), established pursuant to Article 62f A.E.L. for the period from 1 January 2022 to 31 December 2022. This price is at the same time a maximum price, which means that customers who have previously concluded a contract with a supplier providing for a lower price shall be subject to this lower price until the expiry of the contract. Even if price reductions were to occur in 2022 and traders started to offer prices lower than the ex-officio supplier's tariff, the lower prices would apply. The adopted solutions do not allow the possibility to increase the prices and tariff rates of gaseous fuel in 2022. Gas sellers who fail to comply with the obligation to apply the frozen prices and rates will be subject to a fine of no less than PLN 1 million and no more than 15 per cent of the fined company's revenue.

In doing so, the legislator recognised that the extension of tariff protection must be combined with the previously mentioned compensation scheme for natural gas sellers. Gas sellers to tariff customers will be entitled to compensation,

i.e. the difference between the actual purchase price and the selling price according to the tariff, paid from the Price Difference Payment Fund. The compensation mechanism has been shaped as a measure to protect household and essential utility customers without providing a financial benefit to gas sellers at the same time. As this publication has been dedicated to certain groups of gas fuel consumers, this issue will not be considered further.

Summary

Energy regulation, with particular reference to the natural gas sector, is strongly focused on safeguarding the interests of the human individual, hidden under the legal definition of household natural gas consumer, vulnerable consumer or protected customer. The above is reflected in the regulations protecting customers from possible interruptions in natural gas supply and engaging energy companies in measures to ensure their uninterrupted supply. Due to the specific nature of the natural gas market, including the need to import natural gas to Poland, the continuity of supply depends on political relations between countries. It can therefore be pointed out that the dynamics of the EU's energy security policy are largely determined by the international situation. Thus, Member States should be guided by the principle of energy solidarity, provided for in Regulation 2017/1938, obliging them to act in solidarity when crises arise in the form of insufficient gas supply. The EU regulation obliged Member States to define a protected customer. Under national law, this is regulated in the Regulation of the Council of Ministers of 17 February 2021 on the manner and procedure for the introduction of restrictions on the off-take of natural gas, which is one of the two main measures to counteract supply disruptions set out in the Act on stocks. The mechanism for introducing restrictions is intended to ensure a secure supply of natural gas to protected customers.

Significant in this regard are the provisions of the Act of 26 January 2022 on special solutions for the protection of consumers of gaseous fuels in connection with the situation on the gas market, which provides for the need to introduce special shielding solutions enabling measures to be taken to minimise the negative socio-economic effects associated with the sharp increase in natural gas prices on the market. These are intended to provide support for households, residents of multi-apartment buildings and certain vulnerable consumers. The law significantly expands the group of entities entitled to benefit from tariff protection.

Against this background, it can be concluded that the regulations presented do not only serve to steer economic processes, but also safeguard social interests. This underlines the importance of the subjective dimension of energy security, which

relates to the participants in the natural gas market. In doing so, special attention has been paid to the natural gas consumer who is a basic good to be supplied with natural gas by the state. Interestingly, there is now a move away from a focus on the state as the main object of security to the individual being the most important good. Human security in particular is the most comprehensive and advanced conceptualisation of human security as a subject today¹¹.

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