

President of Energy Regulatory Office's term of office comes to an end



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Introduction

Maciej Bando's five-year term of office as the President of the Energy Regulatory Office came to an end on 2 June 2019. A first vacancy notice was published on the *Public Information Bulletin's* website on 30 April 2019 and the application deadline expired on 17 May 2019.

A team appointed specifically for this purpose was expected to select up to three candidates, whose applications should have been proposed to the prime minister. However, on 25 June 2019 the spokesperson of the Council of Ministers communicated that the selection procedure had been completed without selecting any candidates. Therefore, Maciej Bando is still performing the function of the President of the Energy Regulatory Office. A new vacancy notice was published on 26 June 2019. The application deadline expires on 8 July 2019.

Competencies

The President of the Energy Regulatory Office was established as a regulatory body to:

- carry out tasks regarding the management of fuels and energy; and
- encourage and promote competition in the energy sector.

The President of the Energy Regulatory Office is appointed and operates according to the Energy Law (Act of 10 April 1997) and national energy policies with the aim of balancing the interests of enterprises and energy recipients.

In order to fulfil these tasks, Article 23(2) of the Energy Law establishes a vast catalogue of the President of the Energy Regulatory Office's competencies, including:

- granting and withdrawing licences;
- approving and controlling the application of tariffs for gas fuels, electricity and heat, including the analysis and verification of costs assumed by energy enterprises as justified to calculate prices and rates of charges;
- developing guidelines and recommendations for development plans for meeting the present and future electricity demand and other documents which are developed by companies and subsequently approved, as well as approving such documents;
- appointing system operators;
- granting certificates of independence;
- ensuring compliance with Energy Law, EU law and gas and electricity quality standards of service obligations;
- approving transmission and distribution network codes, methods of capacity allocation and congestion management;
- resolving specific cases and types of dispute;

- imposing fines according to the Energy Law and other acts; and
- keeping registers of, among other things, manufacturers of energy and liquid fuels.

Moreover, the President of the Energy Regulatory Office cooperates with competent bodies to:

- counteract the practices of energy enterprises that limit competition; and
- supervise financial markets.

It must also cooperate at the EU level with EU authorities, European Free Trade Association member states and the Agency for the Cooperation of Energy Regulators.

In addition, the President of the Energy Regulatory Office undertakes non-imperious informational and publishing duties, including collecting and processing information to improve the efficiency of energy enterprises and the energy market.

Its duties include promoting renewable energy sources, energy efficiency, combined heat and power (CHP), electromobility and more on the basis of applicable laws (eg, the Act of 20 February 2015 on Renewable Energy Sources, the Act of 20 May 2016 on Energy Efficiency, the Act of 25 January 2019 on Promoting Electricity from High-Efficiency Cogeneration and the Act of 11 January 2018 on Electromobility and Alternative Fuels).

For example, the President of the Energy Regulatory Office:

- issues and withdraws energy efficiency certificates;
- is responsible for the operation of a renewable energy source support system that:
 - organises auctions for investment aid;
 - determines which suppliers must purchase energy produced by renewable energy sources;
 - issues and redeems certificates of origin for energy from renewable energy sources and agricultural biogas; and
 - determines the rate of renewable energy source charges; and
- is responsible for operating a high-efficiency cogeneration support system through:
 - the organisation of proceedings (eg, auctions and calls for proposals) for granting financial support for CHP installations; and
 - the determination of cogeneration rates.

Comment

The President of the Energy Regulatory Office's competencies are not limited to regulating energy, gas or heating companies, but also allow it to influence these markets as a whole. The exercise of these competencies is in many cases determined by the law, but to some (frequently broad) extent, the President of the Energy Regulatory Office makes decisions under so-called 'administrative discretion'. Due to the statutory tasks of the President of the Energy Regulatory Office, its position must guarantee the independence of the regulator. Moreover, leaving certain matters to the discretion of a qualified, independent administrative authority allows the market to be regulated more efficiently than by leaving those to the legislature or the government.

On the other hand, a new President of the Energy Regulatory Office may lead to a change of method in the execution of some competences under its administrative discretion, for example:

- approving and controlling tariff applications for gas fuels, electricity and heat, including the analysis and verification of the costs assumed by the energy enterprises used to calculate prices and charges, as deeming specific costs to be justified is highly discretionary and may serve as an instrument to encourage or discourage companies from undertaking certain investments;
- imposing fines, as the grounds for such penalties are usually broadly defined and require considering the effect of company actions that are challenged; and
- developing guidelines and recommendations.

This change of method in the execution of some competences may be particularly visible in network and supply activities, as most of the regulations concerning the topic are developed by the President of the Energy Regulatory Office and other administrative bodies in the European Union. The President of the Energy Regulatory Office also imposes fines for breaching these regulations and guidelines under the Energy Law.

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