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Efektywność energetyczna w systemie zamówień publicznych

- streszczenie rozprawy doktorskiej

Łódź 2022

Energy efficiency in public procurement law

The aim of the study is to verify the thesis: the regulation of energy efficiency in the scope of public procurement law of the European Union underlines its economic aspect while it neglects the ecological aspect of energy efficiency.

The aforementioned thesis is verified by conducting research towards answering the following questions:

1. Is energy efficiency a means of achieving ecological or economic targets under the European climate and energy policy legal acts?
2. Do the acts of secondary law of European Union establish any criteria concerning the division of contracting authorities' obligations in the scope of energy efficiency into mandatory and non-mandatory?
3. Do the legal provisions secure the efficiency of the award of energy efficient public procurement on the investment, proceeding and performance stage?
4. Is the regulation of public procurement law adequate to achieve the targets of the European climate and energy policy in the scope of energy efficiency?

The study is divided into four chapters, each answering the respective questions aforementioned.

The title of the first chapter is "Climate and energy policy of European Union in scope of energy efficiency". It begins with introduction of the acts of United Nations on the strategy of European Union, particularly through the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement. It is concluded that those acts had direct influence on the adoption of the European climate and energy package, Europe 2020 strategy and the European Green Deal. Every of the aforementioned documents stresses the energy efficiency as a priority; they also mention energy efficiency as a means of prevention of climate changes. The economic benefits of energy efficiency improvement therefore is in background. In this context, the study distinguishes the economic efficiency from energy efficiency, implicating that however they support each other, the lack of balance between them is undesirable. In consequence, the improvement of energy efficiency may be disturbed by rebound effect. Public procurement law of European Union reflects the climate and energy policy by establishing tools supporting green public procurement, in particular the life-cycle costing, ecological award criteria and ecolabels. In conclusion, the climate and energy policy acts of European Union underline rather the ecological aspect of energy efficiency.

The title of the second chapter is "Public procurement as a legal instrument in scope of improvement of energy efficiency of services, supplies and construction works". An analysis of the relevant European secondary law acts is conducted. As a result, it is concluded that there is no clear clue why certain legal acts establish mandatory obligations of contracting authorities, e.g. the Directive on the energy performance of building, whilst many other establish

entitlements or introduce sheer informational obligations. Next, the European and Polish legal provisions pertaining directly to energy efficiency are concerned. They fail in efficiently supporting investments in scope of energy efficiency, in particular by concentrating mainly on the obligations of energy enterprises. Legal provisions concerning energy efficient public procurement are scarce and associate the necessity to award such procurement with its cost effectiveness. The analysis of Polish legal acts establishing financial and organisational framework of energy efficient undertakings lead to analogical conclusions. Moreover, relevant public procurement legal provisions are introduced, especially those regarding the most economically advantageous tender. The Directive on public procurement does not establish any mandatory award criteria beside the lowest price or cost. Nevertheless, energy efficiency may be concerned as a part of life-cycle assessment and therefore as a reflection of the cost criterion; however, no common life-cycle costing method has been adopted since 2014, causing lack of application of life-cycle assessment by contracting authorities. In conclusion, there are no clear criteria of the division of contracting authorities' obligations in the scope of energy efficiency into mandatory and non-mandatory; moreover, partially economic approach toward energy efficiency improvement is observed in the European secondary law acts.

The title of the third chapter is “The application of energy efficiency in particular member states of the European Union”. It begins with an analysis of the functioning of the system of European funds and also other forms of investments of energy efficiency improvement undertakings. The analysis indicates no essential imperfections in that scope. Hence, the accent is put then on the research towards the ability of the regulation of public procurement award and performance stages. As a consequence, nine selected public procurement proceedings are introduced in order to assess their ability to improve energy efficiency. It is concluded that a common problem is a lack of verifications tools of the submitted tenders. The contracting authorities have a tendency to refrain from verifying the energy efficiency increasement declarations in the public procurement award stage; they used to secure the declared effects on the performance stage, mostly by claiming a contractual penalty. Only one examined proceedings indicated a life-cycle costing declaration due to assess tenders on the procurement award stage. The content of the chapter is also an analysis of the adequate energy efficient public procurement solutions throughout particular member states of the European Union, especially Germany due to the large scale of the German *Energiewende* project. In conclusion, the European public procurement provisions introduce inadequate solutions to improve energy efficiency, what inflicts their application on the award and performance stage, as a result of which the contracting authorities secure the ecological effects of a procurement with purely economic means.

The title of the fourth chapter is “The adequacy of public procurement law to improve energy efficiency”. Firstly, an analysis of statistical data is conducted. It indicates that the European Union probably failed to fulfill its resolutions in the scope of energy efficiency, adopted in the Europe 2020 act, which cannot be confirmed due to the negligence of publication of the official results. The European authorities admitted insufficient results for the year 2019 and observed the negative influence of the rebound effect to the effort put in energy efficiency improvement. However, they prefer to focus on the targets for the year 2030 in scope of energy

efficiency improvement. Next, it is stressed that the optimal solution to conduct energy efficient public procurement is to award it with the use of public-private partnership form and life-cycle costing approach. However, the regulation is too complicated for common use and therefore scarcely applied. The relevant legal acts contain multiple non-mandatory provisions that lack in influencing the contracting authorities. As a consequence, it is observed that energy efficiency improvement undertakings is rather a domain of private investments. In conclusion, the regulation of public procurement law is proved to be inadequate to achieve the targets of the European climate and energy policy in the scope of energy efficiency.

The results of the conducted research indicate that however the European climate and energy policy acts aim at stressing the essential part of energy efficiency in achieving the ecological targets, the legal acts of European secondary law fail in representing a consequent approach towards the degree of necessity for the contracting authorities to undertake actions supporting the improvement of energy efficiency in European Union. Furthermore, the large scale of encouraging energy efficient undertakings by the European funds is appreciated while the efficiency of public procurement law provisions in the scope of proceeding the award and the performance of public procurement is criticized, mostly due to the lack of award criteria fulfilment verification tools on the stage of the assessment of the most advantageous tender. Statistical data indicates that the member states did not achieve the targets of the European climate and energy policy acts for the year 2020 in the scope of energy efficiency, which can be partially connected with the lack of ability of the contracting authorities to conduct energy efficient public procurement under the provisions of public procurement law.

In consequence, the final conclusion of the study is that the thesis is verified positively. To balance the economic and ecological aspects of energy efficiency with the benefit for both contracting authorities and the society, the proposals for amendments of relevant legal acts are introduced, especially underlining the necessity to increase the role of the life-cycle cost assessment. Furthermore, the proposals for good practices for contracting authorities are also introduced.