

THE
THE ENERGY
REGULATION
AND MARKETS
REVIEW

EIGHTH EDITION

Editor
David L Schwartz

THE LAWREVIEWS

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PREFACE

In our eighth year of writing and publishing *The Energy Regulation and Markets Review*, we have seen geopolitical changes that have added significant uncertainties to global energy policies. For example, the uncertainties revolving around the United Kingdom's exit from the European Union (a process known as Brexit) have led to uncertainties regarding the UK's energy policies, including with respect to its commitments to reduce greenhouse gases (GHG). The US withdrawal from the multiparty international agreement with Iran this past year and the re-imposition of sanctions have had significant adverse energy investment impacts on Iran and other countries in the region. Despite the withdrawal of the United States from the Paris Agreement and expressions of support from the Trump administration for the coal industry, the United States has continued its extensive investment in renewable generation resources. The 2011 Fukushima nuclear incident continues to impact energy policy in many countries. Finally, we continue to see liberalisation of the energy sector globally.

I CLIMATE CHANGE DEVELOPMENTS

With respect to climate change developments, despite the US withdrawal from the Paris Agreement, we continue to see significant carbon reduction efforts globally, including increases in renewable resources, as well as energy efficiency and demand reduction measures.

In the United States, the Trump administration had pushed for a grid resiliency plan that the Department of Energy (DOE) issued in draft form that, if adopted, would have provided a benefit to the US coal industry, but the Federal Energy Regulatory Commission (FERC) voted unanimously to reject such a plan. A record number of coal and other aged fossil fuel plants retired this past year. Additionally, many states in the United States have pushed for the procurement of thousands of megawatts of renewable resources, including new offshore wind competitive procurements in the north-east. Furthermore, private companies have led the charge to contract for the long-term purchase of renewable energy.

Despite the United Kingdom's continued efforts to follow through on Brexit, this was a record year for renewable generation development and a record low for energy produced by fossil fuel generation. As a result, the United Kingdom experienced a 43 per cent reduction in carbon emissions since 1990. In France, President Macron announced a goal to close the remaining four coal plants by 2022, and France targeted a 40 per cent reduction of GHG by 2030. Italy is seeking to achieve 30 per cent reliance on renewable energy and a 33 per cent reduction of GHG by 2030. Belgium continued its offshore wind procurement efforts, and is seeking to reduce subsidies in future procurements. Denmark is seeking to have all of its energy demand met by renewables by 2050, with 55 per cent reliance upon renewables by 2030. Switzerland is working to increase its reliance upon hydroelectric and other renewable

resources, and to reduce energy consumption by 16 per cent by 2020 and 43 per cent by 2035, compared to 2000 figures. Germany admitted that it would not meet its goal of reducing emissions by 40 per cent by 2020, as well as its goal to reduce energy consumption by 20 per cent since 2008, but it remains focused on renewable generation development, energy efficiency and conservation and energy storage technologies.

Japan continued its efforts to develop solar and wind resources, including opening new sea areas for offshore wind. But the shutdown of most of its nuclear generation has resulted in a significant reliance upon natural gas, including LNG. China set ambitious renewable energy goals, capping energy from coal generation to 5 billion tonnes and aiming to have 15 per cent of generation supplied by non-fossil fuel generation by 2020. Korea planned to abolish its old coal generation facilities by 2022, and committed to cut GHG by 37 per cent by 2030.

Australia began to focus heavily upon energy storage (battery and pumped water) and South Africa increased its renewable independent power procurement efforts.

II INFRASTRUCTURE DEVELOPMENT

For many countries, a reliable energy supply remains the primary concern, regardless of fuel source. As only 35 per cent of Myanmar is connected to the grid, Myanmar continues efforts to electrify remote parts of the country. Iraq continues to have significant infrastructure needs, and Panama and Colombia continue to seek foreign investment. Foreign investment in Iran will be significantly more challenging following the re-imposition of US sanctions.

South Africa is utilising its Integrated Resource Planning process to attract and develop new generation and transmission capacity. Australia is developing one of the largest pumped hydroelectric storage projects globally. Colombia is developing a large hydroelectric project that is expected to produce up to 17 per cent of the country's energy needs, but that effort is hindered by construction delays.

Denmark has five new applications for oil and gas exploration in the North Sea. In the United States, the DOE has issued a study authorising LNG exports to non-FTA nations, finding that the United States will experience net economic benefits from LNG exports, but efforts to develop oil and gas pipelines have been met with increased challenges from environmental groups.

III NUCLEAR POWER GENERATION

Eight years after the Fukushima disaster, Japan has stopped operations for 39 out of its 48 nuclear power stations, and 12 nuclear power stations are in the process of being reviewed for restart under Japan's new stringent safety standards. Germany continues efforts to phase out all nuclear generation, and Belgium's nuclear plants have been offline for maintenance for technical issues for the past few years. France was seeking to eliminate nuclear generation by 2025, but it extended that date to 2035. Korea continued its efforts to phase out nuclear power, abandoning the construction of six new nuclear plants and cancelling the life extension of 10 older nuclear plants. Switzerland shut down one of its remaining nuclear plants.

But the phase-out of nuclear energy is not universal. The United Arab Emirates' new Barakh nuclear power station is 90 per cent complete, and South Africa is still considering building nuclear capacity after 2030. In the United States, even though the early retirement of certain nuclear plants has been driven by cost and power market considerations (rather

than safety concerns), some states have passed legislation to subsidise nuclear energy to allow owners to continue to operate through zero emissions credit programmes, including Illinois, New York and New Jersey, with similar legislation being considered in Pennsylvania and Ohio. While some parties challenged the constitutionality of these zero emissions programmes, two federal courts of appeals have upheld these programmes, and the US Supreme Court denied requests to review those decisions.

IV LIBERALISATION OF THE ENERGY SECTOR

We have seen significant energy sector regulatory reforms in many countries. The European Union has sought to continue efforts to centralise the regulation of the EU energy sector. France has taken significant steps toward further liberalisation of its energy sector, as has Switzerland. Japan fully liberalised its electricity sector, will be implementing unbundling next year, and is liberalising its retail natural gas and petroleum industries to encourage market entry. Australia has opened access to transmission through regulatory reforms to encourage entry into the generation market and has implemented significant market pricing response in response to the increase of renewables. Brazil is implementing net metering regulations this year and is implementing limited retail competition for large load. But the United Kingdom took a step backwards by implementing default price caps rather than market-oriented changes. In the United States, state subsidies for nuclear and renewable generation continue to threaten the effectiveness of capacity market regional pricing.

I would like to thank all the authors for their thoughtful consideration of the myriad interesting, yet challenging, issues that they have identified in their chapters in this eighth edition of *The Energy Regulation and Markets Review*.

David L Schwartz

Latham & Watkins LLP

Washington, DC

May 2019

POLAND

*Iga Lis and Ada Szon*¹

I OVERVIEW

The Polish energy mix is based on hard coal and lignite, which covers more than 80 per cent of the generation. Gas fuels, onshore wind farms, photovoltaic, hydropower and biomass installations are responsible for the rest of the energy generation. There are no offshore wind farms and nuclear power units in Poland. However, in the Energy Policy for Poland until 2040, published by the government, it is highlighted that the energy mix should change in the next years; in particular, the government assumes that in 2030 the participation of hard coal and lignite in the energy mix should not exceed 60 per cent of the generation. Nevertheless, last year, construction commenced on a new coal-fired power plant with a capacity of 1,000MW.

In previous years, the development of renewable energy generation was significant, particularly with respect to onshore wind farms. This growth was supported by ‘green’ certificates (issued for renewable energy only); however, a slowdown occurred in 2012, when the price for the ‘green’ certificates decreased sharply. As a result, a new act pertaining to renewable energy was announced in 2015 and a new support system, in the form of auctions, was implemented. Then, in 2016, another turning point for onshore wind farms took place due to the changes proposed by the Act on Wind Energy Investments; following the introduction of these changes, the development of renewable projects was essentially frozen. Currently, the government prefers offshore wind projects. At the same time, three independent large projects are being developed – two by the state-controlled companies – PGE SA (the biggest energy group in Poland) and PKN Orlen SA (the leading Polish oil company) and the third one jointly by Equinor and Polenergia (a private Polish company).

With respect to natural gas, Polish sources cover only 25 per cent of the market demand and the majority of natural gas is imported. From 2016, Poland no longer imports gas solely from Russia, as a new LNG terminal in Świnoujście covers part of the gas demand. In order to diversify the natural gas supply sources, two independent projects are currently being undertaken – extension of the LNG terminal and a new gas connection with Norway, the ‘Baltic Pipe’.

¹ Iga Lis is a partner and Ada Szon is a lawyer at CMS.

II REGULATION

i The regulators

The regulatory authority

In Poland, the administrative authorities that are responsible for determining the regulatory policy are the Minister of Energy and the president of the Energy Regulatory Authority (ERA). As the Minister of Energy is responsible for the legislative process (i.e., preparation and adoption of legislative acts, as well as creating the policy with respect to the energy market) the President of ERA plays the role of the regulator of activities of energy market participants.

The President of ERA is appointed for five years by the Prime Minister in an open and competitive recruitment process. He may be re-appointed only once. The regulator shall be impartial and independent from any public or private entities. The president is supported by the vice-president of the ERA who is also appointed for a period of five years and may be re-appointed only once.

The scope of the powers and obligations of the President of ERA is very broad. His or her general obligation is to monitor the functioning of the whole energy market, that is, all the segments of the energy industry including electricity and gas markets. He is also entitled to grant licences to conduct business activity in Poland, and approve the tariffs for electricity, gas and heat. The President of ERA is also responsible for managing the auction system (in the area of renewable energy and capacity mechanism), which aims to grant state support for selected projects. Moreover, he or she has the power to control the fulfilment of the obligations set forth in the relevant legislation and to impose financial penalties for violating those obligations.

Main sources of law in Poland

The main act setting forth the general framework for the energy sector in Poland is the Energy Law. This statute defines the basic terms regarding the energy sector and provides the rights and obligations of the main market participants, defines the powers and obligations of the administrative authorities (such as the President of ERA), and sets forth the conditions for conducting business activities in the energy market in Poland.

However, there are many other laws regulating specific subsectors of the energy industry. With respect to electricity, the key legislative acts that promote clean energy in Poland are the Act on Renewable Energy Sources, the Act on the Promotion of Electricity from High-Efficiency Cogeneration as well as the Act on Electromobility and Alternative Fuels. Another key act is the Act on the Capacity Mechanism, which provides a support scheme for electricity generation. The framework for the gas industry is set out in the Energy Law, but also in the Act on Mandatory Stocks of Crude Oil, Crude Oil Products and Natural Gas and on the Principles of Proceeding in Case of a Threat to National Fuel Security and Disruptions on the Crude Oil Market.

Acts of Parliament are not the only source of law regulating the energy market in Poland. When it comes to technical information or information pertaining to very narrow issues, such as rules for the preparation of the tariffs for electricity, gas and heat, are usually set out in the regulations. One of the government bodies issues these; in this case, it is usually the Minister of Energy.

Although not legally binding, one of the key acts that presents the Polish strategy with respect to the energy sector is the Energy Policy for Poland until 2040. A draft of the Energy Policy, proposed by the Minister of Energy, sets out the government's plans for the development of the energy market and the changes that will affect the industry.

As the energy market in Poland is a regulated market, one of the most important acts that create the legal basis for conducting business activities in the field of energy are administrative decisions issued by the President of ERA. The regulator is authorised to issue licences for energy companies that *inter alia* trade in electricity or natural gas and to render decisions in which it can impose financial penalties for violations of the Energy Law or other relevant acts.

Regulated activities

Conducting business activities in the energy market in Poland is subject to approval of the President of ERA. The approval is given by means of an administrative decision – the licence for conducting the business activity.

The list of activities that are subject to licence is set forth in the Energy Law. The obligation to obtain a licence encompasses such activities as the generation of energy and fuels, storage of gaseous fuels, transmission and distribution of energy and fuels, as well as trading in energy and fuels. However, there are some exceptions, for instance, a licence is not required for trading in electricity on the Polish Power Exchange.

If the energy company is willing to commence one of the above-mentioned activities, it has to apply for a licence to the President of ERA. In the last couple of years, the requirements set forth for such entities have been substantially expanded. The president issues the licence to the applicant, which must have its seat in the European Union, Swiss Confederation, a European Free Trade Association member country or Turkey; have the financial resources and technical capacity to guarantee proper performance of the licenced activity; and ensure the employment of individuals of appropriate professional competence.

Ownership and market access restrictions

In Poland, there are not many restrictions imposed on energy companies willing to do business in the field of energy. However, as a licence is the key requirement paving the way for such activities, some specific limitations for licence holders and for entities applying for a licence should be mentioned.

Firstly, a licence shall not be granted to an entity that does not have its seat in the European Union, Swiss Confederation, European Free Trade Association member country or Turkey. Likewise, the President of ERA will not grant a licence if:

- a* the energy company is declared bankrupt;
- b* the energy company has been convicted of any offence or tax offence related to the economic activity conducted by the company;
- c* the energy company is not registered as a VAT taxpayer; and
- d* an entity that has significant influence or has control or joint control within the meaning of the relevant provisions of the Polish Act on Accounting was convicted in the past three years of any offence or tax offence related to economic activity under the Energy Law.

Secondly, if an entity is granted the licence, it must observe the rules set therein as well as statutory obligations provided mainly in the Energy Law. The President of ERA will revoke the licence if the energy company violates its provisions.

Apart from the above, energy companies may face other limitations, which vary according to the type of activities they are performing. For instance, with respect to electricity traders, such limitations regarding prices for electric energy may be found in the internal regulations of the Power Exchange as well as the Transmission Network Code, such as provisions regulating pricing on the balancing market.

Transfers of control and assignments

In Poland, mergers or acquisitions are subject to notification to the President of the Office of Competition and Consumer Protection, which is the administrative authority responsible for supervising the competition on the Polish market and assessing the concentrations.

The relevant entity is obliged to submit a complete merger notification and pay the fee. The President of the Office of Competition and Consumer Protection will issue a decision within one month from the start of the merger control proceedings. However, if the President raises some competition concerns or requires market inquiry, the deadline can be extended by an additional four-month period.

Along with the President of the Office of Competition and Consumer Protection, the European Commission also reviews mergers and acquisitions. This is the case when the merger or acquisition has a community aspect (for instance, a significant presence in the European Union).

According to the Act on Control of Certain Investments, the Minister of Energy is allowed to prohibit the acquisition of shares in an energy company if the transaction is deemed contrary to the interests of national security, human rights and environmental protection.

III TRANSMISSION/TRANSPORTATION & DISTRIBUTION SERVICES

i Vertical integration and unbundling

As required by the EU and Polish regulations, the operation of the national transmission grids for electricity and natural gas is carried out in accordance with the unbundling rules. In both electricity and gas sectors – the transmission system operators are the state-owned companies. Polskie Sieci Energetyczne SA is responsible for the electricity grid and OGP GAZ-System SA is responsible for the natural gas grid.

In 2013, as a consequence of the mandatory implementation of Directives 2009/72/EC and 2009/73/EC (the Third Energy Package), the Energy Law was amended in order to separate the grid activities (transmission and distribution) from activities in the area of production and trade in gaseous fuels and electricity. Previously, both grid activities were regulated in the same way. The fundamental part of this amendment covers the new regulation in respect of the transmission system operators and storage system operators. The transmission system operator is obliged to:

- a* have legal and organisational independence as well as the freedom to make its business decisions;
- b* refrain from the business activities related to the production, generation or trade of gaseous fuels or electricity; and
- c* ensure third-party access.

Such framework of the legislation secures the fulfilment of the European Union requirements.

The abovementioned regulation has not changed deeply the unbundling rules related to the distribution system operators existing in the vertically integrated structure. For the distribution industry, the legal and organisational independence, independence of making decisions and the lack of the personal connection are also required.

ii Transmission/transportation and distribution access

The obligation to introduce TPA rule also resulted from the Third Energy Package, which was implemented by the Polish legislator. The transmission system operator is required to deliver transmission services to all final customers and electricity traders or generators on an equal treatment basis. The same applies to the distribution system operators. To obtain these services, the applying party must enter into a transmission or distribution service agreement. By law, they must provide access to third parties on the objective and competitive rules.

iii Rates

Operators prepare the tariffs for gaseous fuels and energy in accordance with the rules set forth by the Energy Law and the relevant regulations, and present them to the President of ERA for approval. These provisions set the legal limits within which the President of ERA may approve or reject such tariffs. Tariffs should in particular ensure the legitimate business operation costs of the operator are covered, along with a reasonable return on capital and the protection of customers against unjustified rates.

iv Security and technology restrictions

The Polish regulations regarding the critical infrastructure meet the requirements of Directive 2008/114/EC. The critical infrastructure is defined as systems and their functionally related objects, including construction objects, devices, installations, key services for the security of the state and its citizens, and to ensure the efficient functioning of public administration bodies, as well as institutions and entrepreneurs. Certainly, the critical infrastructure covers the systems of energy and fuels. The designation of a given facility, device or installation as critical infrastructure imposes several obligations on its operators. These obligations include preparation and implementation, in accordance with the anticipated threats, of plans for critical infrastructure protection and maintenance of their own reserve systems ensuring security and maintenance of the functioning of this infrastructure until it is fully restored.

Additionally, as a part of the implementation of NIS Directive, the Act on the National Cybersecurity System was adopted in 2018. One of the strategic sectors covered by this Act is the energy sector. The energy companies that are affected by the obligations arising from the Act had to obtain the decision regarding their classification as an operator of key services by November 2018. If the company has been classified as an operator of the key services, it is obliged to commence fulfilling the statutory requirements pertaining to cybersecurity.

IV ENERGY MARKETS

i Development of energy markets

Trading in energy is possible on the commodities exchange, Polish Power Exchange, which is run by the Towarowa Giełda Energii SA.

The Polish Power Exchange operates a commodity exchange for trade in, among others, electricity, liquid and gaseous fuels, emission allowances. It operates on the following markets: day ahead market, intraday market, day ahead market gas, commodity forward instruments market with physical delivery, commodity forward instruments market with physical delivery gas, property rights market for renewable energy sources and co-generation, as well as CO₂ emission allowance market.

ii Energy market rules and regulation

Generally, the Polish legal regulations concerning the electricity market do not include limitations as to the prices for electric energy. However, there might be some restrictions set in the internal regulations of the Polish Power Exchange.

This also applies to the 'balancing market', that is, part of the overall electricity market in which the needs of balancing services are met. In this case, price setting and the limitations in this respect are regulated in the Transmission Network Code as well as in accordance with EU and ACER documents.

iii Contracts for sale of energy

Apart from trading on the organised market such as the one run by the Polish Power Exchange, market participants are allowed to enter into bilateral contracts that create the over-the-counter market. The price and other contractual terms of these bilateral contracts are the result of the negotiations between the parties. According to the Civil Law rule of freedom of contract, the parties are free to determine the terms in their contracts that are not disclosed to the other market participants.

iv Market developments

It should be noted that Poland has committed to changing electricity price limits on the balancing market on the wholesale electricity market. From 1 January 2019, the electricity price limits on the balancing market will not be lower than the limits on the intraday market. The limits must be coherent with the Commission Regulation (EU) 2015/1022 of 24 July 2015, with ACER decision No. 5/2017 of 14 November 2017 and with Commission Regulation (EU) 2017/2195. Hitherto, the price limits amounted to 70 PLN/MWh and 1,500 PLN/MWh.

V RENEWABLE ENERGY AND CONSERVATION

i Development of renewable energy

The government's goal is to achieve the renewable energy target for 2020 set by the European Union at the level of 15 per cent in the energy mix. To be able to reach this level, the government provides strong support to renewable energy projects, which was clearly visible in 2018.

The Polish government decided to support the renewable energy projects by granting various types of state aid. The most significant one is the auction system in which the installations will obtain financial support after winning the auctions organised by the President of ERA. However, the amendment to the Act on Renewable Energy Sources adopted in 2018

not only shaped the auction system but also introduced two other support schemes, namely feed-in-tariff (FIT) and feed-in-premium (FIP) systems. Under these two support systems, small capacity hydro and biogas installations are supported.

The government also plans to soften the requirements set forth for new investments in the Act on Wind Energy Investments. Currently, it is not allowed to locate and build a wind farm if the distance from residential buildings is shorter than 10 times the height of the wind farm, which is measured from the ground to the highest point of the wind turbine plus its technical components (i.e., the rotor blades). The Minister of Energy wants to shorten this distance to allow a greater number of wind projects to be developed; however, no official draft of the amendment to the Act has been published.

ii Energy efficiency and conservation

The Council of Ministers adopted on 23 January 2018 the National Energy Efficiency Action Plan for Poland. This document consists in the summary of the additional measures intended to contribute to the overall energy efficiency target of 20 per cent primary energy consumption savings in the European Union by 2020. The plan provides a description of energy-efficiency-improvement measures by end-use sectors. These measures include a white certificates system, national advisory support system and informational campaigns.

In the area of energy efficiency, there are also programs prepared by the National Fund for Environmental Protection and Water Management or within the Operational Programme on Infrastructure and the Environment 2014–2020. The aim is to enhance energy efficiency of buildings, in the industry and in transport.

iii Technological developments

The government highly supports the development of new technologies in Poland. In 2018, the Minister of Energy published a draft amendment of the Energy Law pertaining to the development of energy storage and smart metering. In this document, the Minister sets forth the framework for storage activities, define basic terms in this respect, provide clear rules for connecting the stores to the grid. The draft amendment in the beginning of 2019 was still in the process of public consultations, thus, the final form and rules are still to be determined.

Not only does the government undertake legislative actions, it also supports the technological developments financially. In 2018, some energy companies received financial grants from the Operational Programme on Infrastructure and the Environment 2014–2020. One of these companies is Tauron Dystrybucja SA, which received over 9 million zlotys for a demonstration project for a stationary energy storage system as a smart grid element. Another company – PCC Rokita SA – will receive over 8 million zlotys for the construction of two projects: intelligent power station and electric power stations in the sewage treatment plant. Due to the modernisation of the station and the implementation of the smart grid system, the losses in energy transmission will be reduced and use of electricity will be more efficient.

Support for the energy companies is a long-term support measure, as in previous years other companies obtained such grants. For instance in 2017 Energa-Operator SA obtained financial support for the project ‘Reconstruction of the grid to Smart Grid standards by installation of smart metering and network automation to activate final customers to improve the energy efficiency and efficient power system management for improving security of supply’.

Projects developing smart cities are also supported. In December 2018, the ‘Smart City Siechnice’ project, conducted by ESV3 Sp. z o.o., was granted over 2 million zlotys to adapt the electricity distribution network in the area of the Siechnice and Oława municipalities to the requirements of the smart grid.

VI THE YEAR IN REVIEW

i The Energy Policy for Poland until 2040

In 2018, the Minister of Energy published a draft of the Energy Policy for Poland until 2040. This document, which was highly anticipated by market participants, presents the long-term strategy in the Polish energy sector. The strategy takes into account the present situation in the Polish energy market and also current trends and goals that the Polish government is aiming to achieve in the next few decades. The Energy Policy has been designed to mirror the EU strategy presented in the ‘Clean Energy for All Europeans’ legislative package, known as the ‘Winter Package’.

One of the key issues in the Energy Policy is a plan to construct a nuclear power plant. As of now, this is still in the distant future; however, the Minister of Energy seems to be determined to develop this project in order to gradually replace the coal-fired plants.

ii Capacity mechanism

One of the milestones in the Polish energy sector in 2018 was the decision issued by the European Commission on 7 February 2018 (State Aid No. SA.46100 (2017/N) – Poland – Planned Polish capacity mechanism) in which the Polish electricity capacity market was approved. In its decision the Commission has found the Polish capacity mechanism to be compatible with the internal market in accordance with Article 107(3)(c) of the Treaty on the Functioning of the European Union.

The Polish capacity market, regulated in the Act on the Capacity Market adopted in December 2017, was based on the British model of the capacity mechanism. This mechanism provides for remuneration, which electricity generators will receive for their availability to generate electricity, whereas demand-side-response will benefit from the reduction of their electricity consumption.

The first auctions, which were conducted for the 2021–2023 delivery period, took place in the fourth quarter of 2018.

iii Renewable energy

At the end of 2017, the European Commission approved the new support system for renewable energy sources in its decision of 13 December 2017 (State Aid SA.43697 (2015/N) – Polish support scheme for RES and relief for energy-intensive users). Therefore, the Polish legislator introduced material changes to the Act of 20 February 2015 on Renewable Energy Sources to set the framework for the new support scheme.

Until now, Poland has been supporting renewable energy sources through its system of certificates of origin of electric energy. However, the Polish legislator decided to incentivise the development of renewable energy in Poland by setting up a new support scheme in the form of auctions. This measure will apply to installations with a rated output above 500kW, which will obtain the right to cover the negative balance that will constitute the difference between the price included in the offer for an auction and the price actually applied in the sale transactions. With respect to installations with a rated output below 500kW – they will

be allowed to sell electricity to an 'obliged seller' after concluding a contract with him. The contract is to specify the price of electricity expressed in zlotys for 1MWh determined by auction and the amount of electricity in MWh, which the energy generator is obliged to produce in the following years.

The first auctions for renewables were conducted in the fourth quarter of 2018.

iv Electromobility

Another key legislative act is the Act of 11 January 2018 on Electromobility and Alternative Fuels. The idea behind this act is to promote and develop electromobility in Poland. As this is the first act fully dedicated to this issue, it sets the framework for the development of the necessary alternative fuels infrastructure. To speed up the process, the Polish legislator provided for some administrative benefits (such as no obligation to obtain a building permit in the case of charging stations or charging points).

The act also supports vehicle owners. It sets out a number of tax measures to facilitate electromobility by introducing excise exemptions for electric vehicles and hydrogen-powered vehicles and a temporary excise exemption for hybrid vehicles (up to 1 January 2021) as well as more favourable depreciation write-offs for electric vehicles.

Electromobility in Poland is still in early stages of its development. The government's plan is to first develop the alternative fuel infrastructure. This is believed to encourage car drivers to switch from their regular cars to electric cars and cars fuelled by hydrogen, LNG or CNG.

v High-efficiency cogeneration

The end of 2018 was a busy time for the Polish legislator. On 14 December 2018, the Act on the Promotion of Electricity from High-Efficiency Cogeneration was adopted. The Act sets forth the rules for providing new support for electric energy generated in high-efficiency cogeneration in cogeneration units. These new support measures are to replace the current support mechanism in the form of certificates of origin from cogeneration.

The Act on the Promotion of Electricity from High-Efficiency Cogeneration provides four support measures in the form of:

- a* auctions conducted by the President of ERA;
- b* guaranteed premiums in the amount set by the Minister of Energy;
- c* individual guaranteed premiums as individually set in a decision issued by the President of ERA; and
- d* selection system – in the form of individual cogeneration premiums, for units that will win the selection process conducted by the President of ERA.

Each of the aforementioned support measures are designed for different types of cogeneration units (new, existing, modernised, materially modernised). Before obtaining support, all cogeneration units must obtain a decision from the President of ERA allowing the unit to participate in the relevant support scheme.

On 15 April 2019, the European Commission approved the support scheme regulated in the Act on the Promotion of Electricity from High-Efficiency Cogeneration.

vi Act on Energy Prices

Secondly, the Act on Energy Prices was adopted on 28 December 2018. As prices for emissions allowances and coal have grown, the Polish legislator decided to prevent increases in electricity prices that were expected in 2019. Its plan was to ‘freeze’ the electricity prices in 2019 by setting price caps based on 2018 price caps.

Energy companies trading in electric energy have to establish prices and fees contained in tariffs for 2019 for final customers that are:

- a* the prices applicable on 31 December 2018 set forth in the tariff that was approved by the President of ERA; and
- b* not higher than prices and fees for electric energy applicable to final customers on 30 June 2018, as set by a given company in a form other than in (a), including in the form of individually negotiated contracts or according to the Public Procurement Law.

Energy prices as set in accordance with the aforementioned rules must be applied from 1 January 2019.

The market participants raised some serious doubts with respect to the compatibility of the Act on Energy Prices with European Union law. Three sets of rules were indicated as having been potentially violated, namely internal electricity market rules, state aid rules and EU ETS.

VII CONCLUSIONS & OUTLOOK

In 2018, the energy sector in Poland was in the process of significant change and many legislative changes took place this year. This was due to the fact that the Polish government is trying to balance the need for energy security and the need to prevent climate change, to incentivise new investments, and to support existing projects. To fulfil obligations imposed by the European Union regarding the climate change, the Polish government supports investments in renewables and cogeneration by providing state-aid mechanisms for these subsectors. At the same time, it still supports coal-fired power plants, by means of the capacity mechanism.

What should we expect in 2019 in light of the changes that happened in 2018? This coming year will probably be as challenging for the market participants as the previous one, since new developments and amendments in the legislation are currently being prepared, but the outcome of these changes is still to be determined.

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