

Capacity market: consultation on necessary amendments



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In recent weeks, information has been published concerning the draft amendment to the Act of 8 December 2017 on the Capacity Market (*Journal of Laws* 2020, Item 247, as amended). The amendment aims to adapt Polish regulations to reflect the new electricity market structure agreed at the EU level as part of the Clean Energy for all Europeans package. The Ministry of Climate is responsible for the draft law, the adoption of which is planned for the third quarter of 2020.

Reasons for amendment

The draft amendment's main purpose is to ensure that the Act on the Capacity Market complies with the EU Regulation of 5 June 2019 on the internal market for electricity (2019/943) (OJ EU L of 2019, 158, p54), particularly with regard to new requirements for generation capacity mechanisms, including carbon dioxide emission limits.

As of 4 July 2019, EU Regulation 2019/943 excludes new generation units (which were not carrying out commercial production before that date) which emit more than 550g CO₂/kWh from participating in the capacity market. Further, as of 1 July 2025, existing units (which were carrying out commercial production before 4 July 2019) which emit more than 550g CO₂/kWh and more than 350kg CO₂/kW per year will also be excluded. These emission limits do not apply to capacity agreements concluded before 31 December 2019 (see Articles 22(4) and (5) of the regulation).

Further, according to the regulation, the regulatory authorities will determine and make public the value of undelivered energy; the estimated values of undelivered energy will be updated at least every five years. EU Regulation 2019/943 also requires the President of the Energy Regulatory Office to present the capacity to be purchased at auction.

Polish capacity market

According to the information presented in the Inventory of Government Legislative and Programming Works, the Act on the Capacity Market proposes changes in the following areas, among others:

- the implementation of EU Regulation 2019/943;
- reporting by the operator, the President of the Energy Regulatory Office and the minister in charge of energy on the conclusion of and any changes to the agreement on cooperation with foreign transmission system operators;
- the adaptation of the Act on the Capacity Market to accommodate the split payment mechanism;
- the model for calculating penalties for commissioning delays;
- the introduction of the possibility to adjust the parameters of capacity agreements (eg, a change of available capacity or a change from electricity generation technology to low-emission technology);
- the determination of a party and date to publish the penalty rate for a given supply year; and
- updating and completing the provisions on the capacity fee.

The Act on the Capacity Market regulates the organisation of the capacity market and sets out the rules for supplying electricity to the power system during periods of emergency (Article 1(1) of the act).

Under Article 1(2) of the act, this regulatory solution is intended to ensure the medium and long-term security of electricity supply to final customers in a cost-effective, non-discriminatory and sustainable manner.

EU internal market for electricity

On 1 January 2020 EU Regulation 2019/943 – one of the key elements of the new electricity market structure agreed in the Clean Energy for all Europeans package – entered into force (with exceptions). The regulation establishes the basic principles of an efficient electricity market and affects:

- electricity market participants;
- transmission and distribution network operators; and
- electricity generators.

Pursuant to Article 20(3) *et seq* of the regulation, as Poland applies a capacity adequacy mechanism in the form of a capacity market, it had to prepare an electricity market reform implementation plan and submit it to the European Commission for its opinion. The European Commission published a draft of the Polish implementation plan and launched public consultations, after which it issued an opinion setting out its recommendations. The agreed implementation plan, which takes the European Commission's recommendations into account, was adopted on 14 May 2020. The supplemented document contains a plan for electricity market reforms with respect to:

- the balancing market;
- demand side response;
- the retail market;
- network development and cross-border interconnections; and
- allocation restrictions.

The document also considers the impact of the COVID-19 pandemic and its negative consequences for the timely implementation of both current investments and the reforms that have been launched.

As regards the capacity market, the current legislative works primarily aim to take into account the limits introduced by EU Regulation 2019/943. It is indicated that because generation units which emit more than 500g CO₂/kWh account for the majority of all generation units in Poland, the draft amendment to the Act on the Capacity Market includes only the amendments necessary to implement EU Regulation 2019/943. As a result, the admission to the capacity market of units which emit more than 500g CO₂/kWh and an average of less than 350kg CO₂/kW on an annual basis has been waived. Provisions are planned which will prevent the

participation of units which do not meet the 550g CO₂/kWh limit in the certification for auctioning with a view of participating in capacity auctions. Nevertheless, units which do not meet the indicated limit and were established before 4 July 2019 will be admitted for certification and participation in the secondary market only. In implementing the regulation, the draft amendment:

- provides for the addition of elements necessary to apply the emission limits to units which commenced operations on or after 4 July 2019; and
- repeals the provisions which prevent simultaneous cross-border participation in multiple capacity mechanisms.

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