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Draft amendments to Polish Energy Law: aggregation, demand management and active consumers

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On 2 June 2021 the draft amendments to the Act of 10 April 1997 (the Energy Law)⁽¹⁾ and to the Act on Renewable Energy Sources of 20 February 2015⁽²⁾ were made available for public consultation by the Government Legislation Centre. The draft is extensive and includes numerous changes that are important for the functionality of the energy market. The main purpose of the amendments are to transpose EU regulations resulting from the "Clean energy for all Europeans" package into Polish law.⁽³⁾

Aggregation

The draft proposes adding the following definition to the Energy Law:

[A]ggregation – activity consisting of adding up the amount of power and electricity offered by consumers, producers or owners of electricity storage facilities, taking into account technical capacity of the network that they are connected to for the purpose of selling electricity or trading energy, delivering system services or flexibility services in the energy markets.

Aggregation enables household consumers or industrial companies to access the energy market, where they can offer the energy that they produce in a flexible manner. The draft enables the use of aggregation

services based on a contract for the provision of such services concluded between a final consumer, producer or electricity storage owner and a new entity – an aggregator.

Pursuant to the proposed regulations, the aggregator belongs to the "energy companies" category. Two types of aggregator are distinguished and defined in the draft:

- an aggregator (regular); and
- an independent aggregator.

While an "aggregator (regular)" is defined as "an entity that deals with aggregation", an "independent aggregator" is defined as "an aggregator not related to the energy supplier of a consumer that is a party to the contract for the provision of aggregation services". The draft does not specify which relationships this definition is in relation to but it seems that it is about, among other things, capital and contractual connections.

The independent aggregator has had to be specified due to the introduction of the requirement that energy suppliers should not apply discriminatory technical requirements, procedures or unjustified charges or penalties to final consumers that have concluded a contract with an independent aggregator. It is possible to be an energy supplier and an aggregator at the same time.

Aggregation itself is intended to be a regulated activity that can be performed only after being entered in the register of aggregators, as kept by the regulatory authority. The provision of aggregation services is to take place in accordance with the terms of use of the electricity network and the requirements for the transfer of information between system operators and other energy companies specified in the network operation and maintenance manual.

Demand management

EU Directive 2019/944⁽⁴⁾ obliges member states to introduce a legal framework which ensures that all energy consumers can benefit directly from their market participation, in particular by adjusting its energy consumption to market signals in return for taking advantage of lower energy prices or other financial incentives. These actions can be called "demand management".

Although the draft does not directly define "demand management", the Energy Law amendments are aimed at creating a comprehensive regulation regarding that concept. This is evidenced by the introduction of the definition of "reception response" into the Energy Law:

[R]eception response – change in electricity consumption of final consumers in relation to their normal or current electricity consumption in response to market signals, including in response to time-varying electricity prices or financial incentives, or following the acceptance of the final consumer's offer, submitted individually or as part of aggregation, concerning sales of decrease or increase energy consumption at the price applicable on the organized market referred to in Art. 2 sec. 4 of the Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on the transfer of data implementing Art. 8 sec. 2 and 6 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council in on the integrity and transparency of the wholesale energy market (OJ L 363 of 18.12.2014, p. 121).

The reception response is, similar to aggregation, a certain form of activity on the energy market, allowing the adaptation of energy consumption in certain, specific circumstances. The reception response will be possible due to the introduction of smart metering systems and contracts with dynamic electricity prices that will allow final consumers to adjust electricity consumption to price signals over real time. Unlike aggregation, reception response is not a regulated activity and thus it is easily accessible for household final consumers.

Active electricity consumers

The draft also introduces a new category of energy consumers – active consumers. Active consumers can, to a certain extent in the regulatory environment context, be compared with renewable energy prosumers. The draft proposes the following definition:

[A]ctive consumer – final consumer acting individually or in a group, which:

a) consumes electricity, or

b) stores electricity generated in its area with specified limits or

c) sells the surplus of self-generated electricity, or

d) implements projects to improve energy efficiency that are defined in the Act of 20 May 2016 on Energy Efficiency (Journal of Laws, 2021, item 468), or

e) provides system services, or

f) provides flexibility services

- provided that it is not the subject of the core business or economic activity of this consumer, determined in accordance with the regulations issued pursuant to Art. 40 sec. 2 of the Act of 29 June 1995 on Public Statistics (Journal of Laws, 2020, item 443 and 1486).

Active consumers will be able to operate to a greater extent than renewable energy prosumers; however, the latter will also be considered "active consumers", since a 2021 project provides for prosumers being able to sell surplus energy to the grid. The current model of billing renewable energy prosumers operates on the basis of the joint billing of energy consumed from the grid, with energy fed into the grid (net metering).

Pursuant to the draft, an active consumer may act independently or through aggregation. EU Directive 2014/944 obliges member states to ensure that active consumers can have a separate settlement of electricity fed into the grid from the electricity consumed from the grid, so that they participate in an appropriate and balanced way in the overall breakdown of the energy system costs. While it is not explicitly stated, a smart meter may be needed to take full advantage of the active consumer status. On 18 June 2021 an amendment to the Energy Law⁽⁵⁾ was published, providing for the installation of smart meters for final consumers according to a specific schedule for 2023–2028 (for further details please see "Polish Energy Law: amendment comes into force"). However, final consumers that want to become active consumers will be able to obtain such a meter on request.

The draft specifically indicates a closed catalogue of activities that can be undertaken by active consumers. Most of them can be taken by both household and industrial customers. However, such activities would be extremely difficult, if not impossible, for household consumers to undertake (eg, providing system services). From among these activities, one deserves special attention – providing flexibility services:

[F]lexibility service – a service provided by system users or aggregators for the electricity distribution system operator to ensure security and increase the effectiveness of the system development, including the congestion management system in this system.

Flexibility services can be compared to system services; the main difference is their scale. System services are ordered by the transmission system operator to ensure the proper functioning of the power system as a whole. Flexibility services are to be ordered by the distribution system operator to ensure the proper functioning of the distribution system and, therefore, are decentralised. The catalogue of flexibility services and the detailed conditions for their provision will be specified in the distribution network operation and maintenance manual.

Comment

The draft amendments open up new business opportunities on the energy market. Some of the proposed solutions are aimed at only professional entities (eg, aggregation) but most of the changes are also aimed at the other categories of energy consumers. While demand management has been implemented for professional entities, it may now be rolled out on a larger scale to include household consumers. Moreover, for household consumers, the concept of being an active consumer and the proposed changes in the support system for renewable energy prosumers seem to be particularly important. This will be crucial not only to implementing appropriate regulations, but also to making final consumers aware of the possibilities resulting from the proposed new forms of activity. Higher awareness is especially necessary for those in the household energy consumers category.

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Endnotes

(1) Act of 10 April 1997 – Energy Law (*Journal of Laws*, 2021, item 716, as amended).

(2) The draft amendments are available here (in Polish).

(3) The "Winter Package" is a legislative proposal consisting of EU directives and regulations.

(4) EU Directive 2019/944 of the European Parliament and of the Council, 5 June 2019, on common rules for the internal market for electricity and amending EU Directive 2012/27/EU, OJ L 158, 14.6.2019, pp 125-199.

(5) Act of 20 May 2021 amending the Energy Law and certain other acts (*Journal of Laws*, 2021, item 1093).