



Restrictions on the electricity consumption

PRINCIPLES FOR INTRODUCING ADMINISTRATIVE RESTRICTIONS ON ELECTRICITY AND NATURAL GAS CONSUMPTION

In the context of growing concerns about ensuring the constant supply of fuel and electricity, we present below basic information on the principles of introducing administrative restrictions on the consumption of electricity and natural gas in the territory of Poland.

It is worth emphasising that administrative restrictions on the consumption of electricity and natural gas are, in the hierarchy of proceedings, the final instrument to reduce the demand for electricity and natural gas of a non-market nature. This instrument is implemented based on previously developed restriction plans and, as a matter of principle, should only be used when market-based instruments are unable to balance electricity and natural gas demand and supply.

The basic principles to introduce electricity and natural gas restrictions are presented separately due to different legal sources and the different procedures governing the restrictions on the electricity and natural gas markets. The distinctions result, i.a. from the different characteristics of the indicated markets, including the different storage opportunities for electricity and natural gas.



ELECTRICITY

When can restrictions on electricity consumption be introduced?

Restrictions on the supply and consumption of electricity may be introduced in cases of a **threat to**: the energy safety of the Republic of Poland, **the safety of electricity supply**, the safety of persons, or the occurrence of significant material losses.¹

In practice, the basic reason to introduce restrictions may be the **reduction of the available reserves of generating capacity below the necessary volumes**, in particular, due to the unavailability of key generating plants (e.g. breakdowns, repairs, the limited availability of fuels, or limited generation from weather-dependent sources) and the inability to import electricity in a period of high demand for electricity.

In any case, the introduction of restrictions may take place after operators have exhausted all available means to ensure the proper operation of the electricity system.²

Who can introduce restrictions in electricity consumption?

The entities entitled to introduce restrictions on the consumption of electricity in the area of the whole or part of the state are:

1. without time restriction – the Council of Ministers, by way of a regulation issued at the motion of the minister responsible for energy (publication in the Journal of Laws), and

¹ This includes, in particular, the consequences of actions resulting from introducing a state of emergency, as well as the consequences of a natural disaster or a direct threat of technical failure, the introduction of an embargo, a blockade, a restriction or lack of supply of fuels or electricity from another country to the territory of the Republic of Poland, disruptions in the operation of electricity systems connected to the national electricity system, a strike or social unrest, the reduction of available generating capacity reserves below the necessary volumes, or the impossibility of their use.

² i.e. the impossibility of balancing (increasing) the supply of electricity by, i.a.: (a) the use of balancing offers, (b) ordering the start-up or increase of generation by centrally dispatched generating units, (c) the intervention purchase of capacity or electricity (including from entities offering to reduce energy consumption for remuneration), or (d) the announcement of a state of emergency and the supply of capacity by entities that, within the capacity market, obligated themselves to remain ready to supply capacity during periods of emergency.

2. until the entry into force of the regulation of the Council of Ministers referred to above, but not longer than for a period of 72 hours, the transmission system operator (PSE S.A.), by means of radio announcements broadcasted by Channel 1 of the Polish Radio (Polish: *Program 1 Polskiego Radia*) at 7:55 a.m. and 7:55 p.m. and posted on the operator's website.

The regulations also provide a procedure to notify energy consumers of the restrictions by short messages (SMS) or by telephone.

Who is covered by the restrictions on electricity consumption?

Each electricity consumer in the scope of a **facility with a contracted capacity of at least 300kW**.

To identify the boundaries of an object and the total contractual capacity for that object, an object is considered to be a building or a structure (a separate part of which or a complex of them), located at a single address or in a single location, together with interconnected facilities by grid or a consumer installation connected to the electricity grid to supply electricity based on a sales contract and a contract to provide electricity transmission, or (c) distribution services or a complex contract.

If a facility, so defined, is supplied by several electricity system operators (e.g. a simultaneous supply from the grid of two distribution system operators), the contracted capacities specified in the contracts with the different operators will not be summarised. In addition, if the total contracted capacity varies from month to month for a given facility, regarding this facility, the consumer is subject to restrictions in those months for which the total contracted capacity is set at a level of at least 300kW.

³ For instance, one building supplied under one distribution agreement via two lines with contracted capacities of 200kW and 150kW is one facility and is restricted. Conversely, two commercial premises located next to each other and supplied from a single distribution grid but under two distribution/ complex agreements and without interconnected plants, will constitute two premises.

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Who is protected from restrictions in electricity consumption?

The obligation to comply with the restrictions does not apply to consumers concerning facilities fulfilling at least one of the following conditions:

1. the total contracted capacity of the facility is below 300kW,
2. the facility is a hospital or other emergency facility,
3. the facility has the status of an object of particular importance for national safety and defence under Article 6 (2) Point 4 of the Act of 21 November 1967 on the Common Defence Obligation of the Republic of Poland,
4. the facility is used directly for:
 - a. the broadcasting of radio and television programmes nationwide,
 - b. ensuring air, rail, and public mass transport,
 - c. the extraction of fossil fuels from deposits, their processing, and their supply to consumers, including the extraction, transmission, or distribution of gaseous fuels,
 - d. the execution of tasks significantly affecting the fulfilment of environmental protection requirements, including the disposal and treatment of waste water in terms of collective waste water disposal,
 - e. the generation, transmission, or distribution of electricity or heat, or

- f. the performance by entrepreneurs of tasks for state defence in the scope of the mobilisation of the economy under Article 2 Point 1 of the Act of 23 August 2001 on the organisation of tasks for state defence performed by entrepreneurs, during the period of launching the programme of mobilisation of the economy in the scope of the performance of these tasks, or
5. the facility constitutes critical infrastructure included in the index referred to in Article 5b (7) Point 1 of the Act of 26 April 2007 on crisis management (Journal of Laws of 2020, item 1856 and of 2021, item 159), located on the territory of the Republic of Poland.

According to the new regulations, the above-described scope of restriction protection only applies if the protected facility (its separated part) has been specified, at the request and in accordance with the consumer's declaration, in the relevant distribution agreement or complex agreement. The consumer is also obliged to notify the operator (in the case of a complex contract - the seller) of the termination of the reasons for protection



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How to fulfil the obligation of electricity consumption restrictions and what are the plans to introduce restrictions?

For the introduction of restrictions on supply and electricity consumption, the consumer must fulfil the obligation of restrictions as a rule by itself, reducing its electricity consumption at the facility to a level no higher than the maximum electricity consumption for the power supply degree announced by Polish Power Grids (Polish: *Polskie Sieci Elektroenergetyczne*, "PSE S.A.") as specified in the plan to introduce restrictions ("**Plan**") developed for the facility.

The Plans for particular facilities are developed by electricity system operators.

The Plan defines the maximum levels of power consumption for particular power supply degrees from 11 to 20, where the 11th power degree means the obligation of power consumption not exceeding the contracted power, while the 20th power degree means the obligation of power consumption not exceeding the arithmetic mean of the lowest average hourly energy consumption recorded in particular months during the 9 months of the previous year (excluding the 3 months of the previous year in which the average hourly energy consumption was the lowest).⁴ This means that the new regulations - unlike the old ones - provide for the automatic setting of maximum levels of energy consumption for particular levels of supply by operators without the need/possibility to agree on "safe power" between the operator and the consumer (exceptions include facilities without appropriate metering and billing systems, as well as facilities whose separate parts are protected).

⁴ As regards the 12th to 19th power supply degrees, it is adopted that the 12th power supply degree means the obligation to consume at a power not exceeding the "maximum power consumption" calculated as the arithmetic mean of the highest average hourly energy consumption recorded in the preceding 9 months (excluding the 3 months with the highest average hourly energy consumption in a given year), while the 13th to 19th power supply degrees assume equal reduction of the maximum power consumption between the maximum and minimum power consumption values determined for the 12th and 20th power supply degrees, respectively.

The Plan is developed annually, for the period from 1 June of a given year (n) to 31 May of the following year (n+1), based on information on the contracted capacity for the facility as at 1 January of the given year (n) and data on hourly energy consumption by the facility in the period from 1 January to 31 December of the previous year (n-1). The Plan should be communicated to the consumer in documentary form (postal consignment, e-mail) by 15 April of the year (n).⁵ The legislator allows for the possibility of correcting and updating the Plans during the period for which they have been drawn up, with the exception of updating during periods when restrictions in the supply or consumption of electricity have been introduced.

What are the sanctions for non-compliance with the obligation to restrict electricity consumption?

Entities that do not comply with restrictions on the supply and consumption of electricity are subject to an **administrative fine of no less than PLN 10,000 and no more than 15% of the fined entrepreneur's revenue** generated in the previous fiscal year. The penalty is imposed by the President of the Energy Regulatory Office by way of a decision which can be appealed to the District Court in Warsaw – the Court of Competition and Consumer Protection. The appeal must be submitted within a 2-week period. In the proceedings, it is possible to appeal against the first instance judgment and submit a cassation appeal to the Supreme Court.

⁵ The restriction introduction Plan developed by the transmission system operator (PSE S.A.) is additionally agreed with the President of the ERO whereby the agreed restriction introduction Plan developed by the transmission system operator (PSE S.A.) is applied until the date of the agreement of the next Plan of this operator.

How to prepare for the potential introduction of electricity consumption restrictions?

To prepare for the potential introduction of restrictions, consumers should, in particular,:

1. identify the status of individual facilities under the electricity restrictions regulation (identify facilities and the contracted capacity, and the existence of premises qualifying the facility as protected against restriction),
2. analyse agreements and correspondence with the distribution system operator/seller for compliance with the restriction regulations and - in the case of non-compliance - take action to appropriately consider the status of the facility in the contractual documentation and the submitted Plans (concerning, in particular, the inclusion of restriction protection), and
3. provide procedures enabling the: implementation of restrictions introduced, including backup power supply protection (the purchase or rental of aggregates and agree with the grid operator the rules of their connection and operation), identification of facilities that can / should be supplied in the case of an announcement of particular power supply degrees, appropriate application agreements with contractors (including the introduction of an obligation to comply with the restrictions by entities to which energy is made available (e.g. tenants) and the rules of liability for non-compliance, as well as the introduction or clarification of the rules of liability for the lack of supplies / services during the period of restrictions), and clarification of employee procedures and safety on site, etc.

The Infrastructure and Energy Department team of our law firm are happy to provide support in conducting the above processes.

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