SOŁTYSIŃSKI KAWECKI SZLĘZAK

Legal Alert

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Changes in the Capacity Market

On 18 March 2025, the amendment to the Capacity Market Act ("**Amendment**") entered into force. The Amendment is yet another change to the capacity market mechanism, following the recent amendment of 24 January 2025 ("**January Amendment**"). Key changes are aimed at securing dispatchable capacity in the system and introducing two new types of capacity market auctions, allowing support also for sources that do not meet emission standards.

Derogation of EU regulations approved by the European Commission

The changes described below are a result of the implementation of the derogation granted to Poland from the EU's Energy Market Design (EMD) package of regulations, approved by the European Commission until the end of 2028.

The introduction of an emission limit of 550 kg CO2/MWh has limited the access of non-weather-dependent and gas-powered units to support under the capacity market auctions - possibly threatening fully covering demand.

The derogation in question allows for support, under certain conditions, for generating units that started commercial production before 4 July 2019 and whose emissions exceed the 550 kg CO2/MWh limit, as well as for gas-powered units, to increase the likelihood they will use the system.

Supplementary auctions – changes introduced in January 2025

A new type of auction, "***supplementary auctions***", was introduced by the January Amendment. Supplementary auctions are to be held after the completion of the main and additional capacity market auctions if the amount of capacity contracted in the capacity market auctions for a given delivery year is not sufficient to solve the generation shortfall. Supplementary auctions are planned for the delivery periods of: (i) the second half of 2025; and (ii) 2026 and 2027.

Information on the date of the supplementary auctions will be announced by the Transmission System Operator ("**TSO**") by April 30 of the year preceding the delivery period. In the case of a supplementary auction for the second half of 2025, the TSO is required to announce the date of the supplementary auction by 31 March 2025.

The maximum price for the capacity suppliers in the supplementary auctions is set at no more than 72 euros/kW.

Who are the supplementary auctions for?

The following entities will be eligible to participate in supplementary auctions:

- existing generation units,
- existing foreign generation units (which have previously won the initial auction for a given delivery period but have not entered into a capacity agreement),
- DSR units consisting of existing physical units,
- DSR units consisting of existing foreign physical units (on the same basis as foreign generation units).

Supplementary auctions for the given delivery period are not available to capacity market units covered by a capacity obligation for a given delivery year, or physical units that are part of such a capacity market unit.

To participate in the supplementary auctions, an entity should previously undergo general certification and participate in the certification for the supplementary auction.

Follow-up auctions

The January Amendment has led to the introduction of another type of auction, i.e. "***follow-up auctions***", which are scheduled for the delivery years 2029 and 2030. These follow-up auctions are to be conducted following the main auction for the given delivery year if there will be insufficient coverage of capacity demand after the main auction. In that event, the TSO will conduct an analysis and provide recommendations concerning the need for the follow-up auction as well as its parameters.

The parameters of the follow-up auction for a given delivery year, in particular, the corrective availability factor for individual groups of technologies or unit levels of capital expenditures related to net achievable capacity, will be determined in each case by the regulation of the Minister of Climate and Environment by 30 April of the year following the year in which the main auction is held, after consultation with the President of the Energy Regulatory Office ("**ERO**").

This newsletter has been prepared to alert our Clients to certain significant developments in the Polish law. It is not purported to be a legal advice concerning any particular situation or circumstances of any of our Clients, and it should not be relied upon as such. If you have any questions concerning the developments discussed in this newsletter and their potential impact on your business in Poland, please kindly contact the partner of our Firm responsible for your engagement.

Who are the follow-up auctions for?

The same entities will be entitled to participate in the follow-up auctions as in the main auction, i.e.:

- existing generation units,
- modernized generation units,
- new generation units,
- existing foreign generation units,
- DSR units consisting of existing physical units,
- DSR units consisting of existing foreign physical units (on terms like foreign generating units),
- DSR units planned, and
- generation units that have just applied for grid connection conditions if their technology allows for uninterrupted capacity supply for at least 48 hours.

To participate in the follow-up auctions, an entity should first undergo a general certification process and participate in the certification for the follow-up auction.

Changes to the Capacity Market Terms and Conditions

On 6 March 2025, the President of ERO approved Update Sheet No. RRM/Z/10B/2024 to the Capacity Market Terms and Conditions.

The changes are aimed at simplifying the capacity market registration procedure and aligning the conditions to participate in the certification for the main auction or additional auctions with changes in the content of the registration application.

The scope of information included in the application for entry into the capacity market register is modified by dropping the requirement to submit:

1. a work plan for the next five years for physical generation units;
2. information on the intention to submit the unit for participation in the next main auction or additional auctions or a statement of non-participation; and
3. an indication of the delivery year to be covered by the main auction (for a planned physical generation unit).

Contact us!

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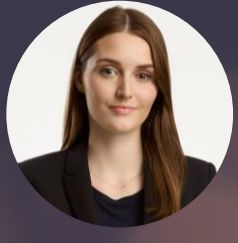

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