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Draft of regulatory reforms for the electric power sector

The following two draft amendments to the Act of 10 April 1997 – the Energy Law have been published at the website of the Governmental Legislation Centre:

a) draft No. **UC84**, prepared by the Minister of Climate and Environment, which includes, among others, a reform of the model for connecting installations to the National Power System, the new regulations governing business activities in the electricity generation and storage prior to obtaining a licence, as well as provisions implementing certain EU legal acts, including Directive **2024/1711** and Regulations **2024/1747** and **2024/1106**;

b) draft No. **UD284**, prepared by the Minister of Energy, which introduces additional regulations concerning settlements for the so-called non-market redispatching and also aims to reinstate the so-called commodity exchange obligation within the electricity market.

Neither of the draft bills has yet been submitted to the Sejm. Draft UC84 is currently at the stage of review by the Legal Committee, while draft UD284 remains in the consultation phase.

This alert presents the key assumptions of both draft bills, with the exception of the reform of the model for connecting installations to the National Power System, which is covered by a separate publication (link).

Pre-Licensing Activity

Business activities involving power generation and storage prior to obtaining a licence has for years remained an area lacking explicit regulation. This has forced market participants to bear imbalance risk and has hindered the transmission system operator's ability to balance the National Power System due to sale of the pre-license power as imbalance.

Draft UC84 provides for the introduction of a new form of regulation at the pre-licensing stage. An undertaking that is required to obtain a license for the generation or storage of electricity will be entitled—upon obtaining the relevant entry in a register maintained by the President of the Energy Regulatory Office (ERO)—to:

a) participate in the balancing market,

b) sell electricity (excluding sales to final customers),

c) store electricity,

d) provide system services, including non-frequency system services,

- each of the above activities hereinafter referred to as "**Pre-Licensing Activity**".

Pre-Licensing Activity may commence - subject to prior registration with the President of ERO - from the first injection of electricity into the grid and may be continued for a period of up to 12 months, or until a licence is granted or the undertaking is removed from the register. Where Pre-Licensing Activity relates only to part of a generation unit or energy storage facility, the 12-month period will be calculated separately from the moment electricity is first injected into the grid from that specific part of the unit or facility.

If it becomes necessary to continue Pre-Licensing Activity beyond the initial 12-month period, the undertaking may apply to the President of ERO for an extension of the registration period. Such application must be submitted at least 30 days before the expiry of the initial 12-month period. The maximum extension period will be 6 months (this extension option does not apply to undertakings generating electricity in offshore wind farms).

During the Pre-Licensing Activity phase, the undertaking will be entitled to become a member of a commodity exchange.

During the Pre-Licensing Activity phase, the undertaking will also be required to pay an annual fee to the state budget. Similarly to a licence fee, this fee will be calculated as the product of the undertaking's revenues from regulated activities and the relevant coefficients specified in an implementing regulation. The fee may not be lower than PLN 1,000 and may not exceed PLN 2,500,000.

Electricity generated as part of Pre-Licensing Activity will not be eligible to support schemes provided for under the Renewable Energy Sources Act.

New Obligations of the DSOs and the TSO

Reports on the flexibility of the electricity system

The amendment imposes on the transmission system operator an obligation to prepare, on a regular basis every two years, a report on the estimated demand for flexibility of the electricity system. The data necessary for the preparation of the report will be provided by the distribution system operators. In addition, the transmission system operator may submit a reasoned request to other system users or distribution system operators for the provision of additional information necessary to prepare the report, going beyond the statutory requirements.

The report is to be submitted to the President of the ERO by 30 April of the relevant year and, following approval, submitted to the European Commission and ACER, as well as published.

Energy storage facilities

The amendment will allow a closed distribution system operator (hereinafter: "**CDSO**") to be exempted from the prohibition on owning, constructing, operating or managing energy storage facilities within such a system. This represents a significant relaxation of unbundling requirements with respect to the closed distribution systems and enables CDSO operators, subject to the consent of the President of the ERO, to carry out energy storage activities within the system.

Registry of energy storage facilities

The electricity system operator will be required to submit a report to the minister responsible for energy, the minister responsible for climate, and the President of ERO containing a registry of energy storage facilities connected to its network. The report will include, among others, the storage technology, power and capacity, efficiency, maximum charging and discharging power, and information on whether the storage facility is part of a generation unit, a final customer installation, or fully integrated into the network. Reports will be submitted semi-annually - by 31 July for the first half of the year and by 31 January of the following year for the second half.

Priority treatment of biogas installations during system constraints

An application for connection conditions may include a statement by the applicant committing to unconditionally reduce the power injected into the grid from March to September, according to a schedule agreed with the relevant distribution system operator (DSO). In return, the DSO must ensure that the applicant can inject energy at the guaranteed connection capacity for at least 14 hours per day during this period.

The amendment also stipulates that biogas installations are to be curtailed or disconnected as the last asset. This priority also applies from October to February, provided that the entity has submitted the above-mentioned commitment statement.

New Powers of the President of ERO

Supervision over discharging REMIT obligations

Regulation No. **2024/1106** expands ACER's supervisory powers regarding compliance with REMIT obligations in a cross-border context. In this regard, the amendment to the Energy Law will enable the President of ERO to support ACER staff conducting inspections in Poland - for example, by instructing the Police or other state authorities to assist - if the inspected entity obstructs or prevents the inspection. It will also allow the President of ERO to take actions based on the results of inspections carried out by ACER.

The Energy Law has been supplemented with a procedure for instructing the Police to assist in connection with ACER inspections, defining the scope of the Police's ERO and the method for reimbursing costs. The new **Article 230a** empowers the President of ERO to take necessary actions based on ACER's investigation report, such as filing a criminal complaint or initiating proceedings for imposing a financial penalty.

The new **Article 56a** of the Energy Law gives the President of ERO the authority to impose measures in case of REMIT violations, including:

a) requiring a market participant or an entity acting on its behalf to cease the violation,

b) if it is possible to determine the amount of benefit gained or loss avoided by the market participant, requiring restitution of the obtained benefit or compensation for the avoided loss,

c) issuing a public warning or notification,

d) imposing periodic financial penalties to compel a market participant or an entity acting on its behalf to fulfill obligations under Regulation No. 1227/2011.

Expansion of the catalogue of penalties

The amendment expands the range of penalties that the President of ERO may impose on entities operating in the electricity market. Among the new breaches subject to penalties are, among others:

- **Failure to maintain a registry of energy storage facilities** and failure to submit reports containing a list of storage facilities connected to the network or fully integrated into the network on time;
- **Charging fees or claiming compensation from a final customer** - in the case of fixed-term contracts with a guaranteed fixed price - beyond what is stipulated in the contract. For household customers and micro- and small enterprises (as defined in Article 7(1)(1) and (2) of the Energy Law), penalties may also apply for claims exceeding the direct economic losses of the energy undertaking;
- **Violations of REMIT provisions**, including failure to make inside information publicly available through inside information platforms.

The amendment also introduces REMIT-related offences into the catalogue of crimes that may trigger liability under the Act of 28 October 2002 on the liability of collective entities for prohibited acts (Journal of Laws 2024, item 1822).

New Obligations of Electricity Sellers

Expansion of the catalogue of mandatory offers for large suppliers

Electricity suppliers with a customer portfolio of at least 200,000 end customers, who were previously required to offer only contracts with dynamic pricing, will now be obliged to provide access to **two types of contracts**:

1. Contracts with dynamic pricing, and
2. Fixed-term contracts (minimum one year) with a fixed, guaranteed price.

Electricity suppliers will not be allowed to terminate a fixed-term contract with a guaranteed price before the end of the agreed contractual period.

Electronic submission of offers

Electricity suppliers will be required to submit to the President of ERO information on any changes to an offer or the introduction of a new electricity supply offer addressed to household customers and micro-enterprises with an estimated annual consumption below 100,000 kWh — no later than 7 days before the planned launch of the offer. Additionally, suppliers must provide this information upon any request from the President of ERO, within the deadline specified in the request, which must be at least 7 days from its delivery. The data must be submitted exclusively in electronic form, in the manner and format specified by the President of ERO in a dedicated form.

Protection of consumer ability to provide flexibility

The draft amendment prohibits structuring fixed-term contracts with a guaranteed price in a way that would hinder or prevent customers from participating in demand response or flexibility services. This means that such contracts must be designed so as not to restrict customer participation in electricity market flexibility mechanisms.

Expanded information obligations towards customers

Suppliers will be required, at the latest on the day the contract is concluded, to provide customers with clear and understandable information regarding the costs, benefits, and risks associated with the selected type of contract, in particular: dynamic pricing contracts, fixed-term contracts with a guaranteed price, and bundled contracts.

Additionally, suppliers must provide detailed information on, among other things:

- the price of electricity, the rules for its determination, and any additional charges;
- the nature of the price (fixed, variable, dynamic);
- available communication channels;
- payment methods, additional services and promotions;
- the web address of the electricity offer comparison tool.

Furthermore, the legislator has expanded the information obligations of the last-resort electricity suppliers, who will be required to inform the end customer on the website where the offer comparison tool is available, such information to be provided within 5 days of the day on which the market operator provides information on such website, and to explain the benefits of concluding a contract other than a reserve contract.

Promotion of energy savings and monitoring of fuel consumption

The amendment imposes the following obligations on electricity suppliers and network operators:

1. **Promotion of energy savings** – informing customers about ways to use energy efficiently, unusually high consumption, and the possibility of self-reading meters; publishing such information on websites and invoices.
2. **Installation of gas meters** – to the extent technically and economically feasible, meters should show actual fuel consumption; the data may be processed only for specific purposes while ensuring personal data protection, including the rights of customers in relation to automated decisions.

Risk mitigation strategy

Electricity trading companies will be required to develop a risk mitigation strategy every three years to ensure the continuity of supply, financial liquidity, and the protection of contract profitability. The strategy must be submitted to the President of ERO by 15 December of the year preceding the period covered by the strategy, and an annual report on its implementation must be submitted by 30 April each year.

If the President of ERO determines that the measures are insufficient, the company will be required to supplement the strategy within one month.

Reinstatement of the Commodity Exchange Obligation

Article 49[1] is to be added to the Act, imposing an obligation on energy companies engaged in electricity generation, to sell 80% of the electricity they produce:

1. on commodity exchanges in accordance with the Act on Commodity Exchanges,
2. on the regulated market or on an organized trading platform operated in Poland,
3. within the framework of a single day-ahead or intraday market coupling conducted by nominated electricity market operators.

At the same time, the legislator has provided that the commodity exchange obligation will not apply to electricity:

- delivered directly to the end customer,
- generated in renewable energy installations with a capacity below 10 MW,
- generated in non-renewable generation units with a capacity below 50 MW,
- produced in cogeneration units with an average annual conversion efficiency above 52.5%,
- consumed for the company's own needs,
- necessary for the operation and performance of tasks by electricity system operators,
- generated in a production unit directly connected to the facilities or installations of an end customer consuming that electricity or to the distribution network operated by that end customer,
- generated and supplied under a contract for the sale of electricity produced from renewable energy sources, as referred to in Article 5(2d), and registered in the ERO registry.

These exemptions **do not apply** to electricity contracted within capital groups – in such cases, the obligation covers all generation units in Poland belonging to entities within the group.

Energy companies will be required to submit an annual report on the fulfillment of the electricity sales obligation to the **President of ERO** by March 31 for the previous year.

Furthermore, the amendment tightens the obligation for the exchange sale of high-methane natural gas. Previously, energy companies involved in gas trading were required to sell at least 55% of the gas introduced into the transmission network in a given year on commodity exchanges, the regulated market, or an organized trading platform. The draft amendment proposes to increase this threshold to 85%, significantly expanding the scope of the exchange obligation.

Non-Market Redispatch of Renewable Energy Installations

Article 9c of the Energy Law is to be supplemented with paragraphs 7r–7za, introducing rules for settlement of electricity in situations where the transmission or distribution system operator issues an instruction to reduce generation or injection of electricity into the grid. Under the amendment, the amount of electricity covered by settlements under electricity sales agreements (both physical and virtual) will include not only the electricity actually injected into the grid but also electricity not produced as a result of such a curtailment instruction, with its quantity determined by the operator in accordance with the applicable instructions. The Legislator defined "non-produced electricity" as electricity that is either not generated by a generation unit or not injected into the grid by an energy storage facility due to the aforementioned instruction.

When determining imbalances under the commercial balancing scheme, the transmission system operator will take into account the curtailed electricity, and the costs associated with it will be borne by the operator issuing the instruction (i.e., electricity not generated as a result of non-market redispatch will not be qualified as commercial imbalance for the balance responsible party relevant for the unit subject to redispatch). Consequently, financial compensation for non-market redispatch will not include imbalance costs.

In connection with the introduction of these regulations, the following changes to the RES Act were also proposed:

- expansion of the obligated seller's purchase obligation – Article 92(1) clarifies that it will cover not only the purchase of electricity produced in RES installations with a capacity below 200 kW but also payment for electricity not produced due to non-market redispatch,

- determination that the purchase price paid by the obligated supplier for electricity questioned by the President of ERO under Article 88(1) of the RES Act shall not be the average market sale price but the average price of electricity not subject to the obligation under Article 49[1] of the Energy Law, as published by the President of ERO,
- expansion of documentation obligations for the obligated seller – Article 93(1)(1) would require daily documentation cover not only produced and purchased electricity but also the volume of non-produced electricity, which forms the basis for settlements between the obligated seller and the producer,
- expansion of Article 93(1)(3a) – for modernized installations, the calculation of value differences must consider not only purchased electricity and electricity under the obligation of Article 40(1) but also non-produced electricity forming the basis for settlements between the obligated seller and the producer,
- modification of negative balance calculation rules – the provision clarifies that the limit considers the sum of produced and non-produced electricity; however, volumes exceeding the theoretical maximum production of the installation (at maximum capacity and cos $\varphi = 1$) cannot be used to calculate the negative balance.

At the same time, the Legislator intends to introduce the grandfathering clause specifying that previous regulations shall apply to electricity covered by agreements concluded before the entry into force of the new law. However, the provisions of Article 9c (7r–7za) (non-market redispatch) apply to agreements concluded from the first day of the month following 12 months after the entry into force of the new law.

It is also proposed that parties to agreements referred to in the newsy proposed Article 9c (7r) of the Energy Law, concluded no later than 12 months from the entry into force of the draft Act, shall adjust these agreements by the first day of the month following 12 months after the entry into force of the Act.

New Regulations Regarding Vulnerable Energy Consumers

Expansion of Eligible Recipients and Documentation Requirements

The amendment significantly changes the rules applying to the so-called support program, i.e., measures developed by electricity and gas sellers, which may include settlement agreements for overdue payments (postponement of payment deadlines, installment plans, waiver or suspension of interest), suspension of enforcement proceedings, or other measures. Previously, such support was available only to vulnerable consumers and consumers – or members of their households – under long-term home care requiring mechanical ventilation.

According to the amended Article 5ga(2) of the Energy Law, the support program would now be accessed by different groups of consumers through different procedures:

1. **Households affected by energy poverty** – provided they demonstrate compliance with the criteria set out in the newly proposed Article 5gb.
2. **Individuals receiving long-term home care with mechanical ventilation** – upon submitting a declaration confirming possession of a current ventilation card.

Clarification of the Definition of Energy Poverty and Introduction of Fixed Income, Cost, and Energy Criteria (Article 5gb)

The amendment expands and specifies the definition of energy poverty. Firstly, it emphasizes that the inability to ensure an adequate level of heating, cooling, and energy would be limited to this resulting from high energy prices. Secondly, it would repeal the previous provision referring to assistance programs and introduce separate statutory criteria for determining whether a household is affected by energy poverty, all of which must be met simultaneously:

1. **Low income** – the household's income cannot exceed a specified percentage of the minimum wage (from 75% for a single-person household to 350% for households of six or more).
2. **High energy expenditures** – the household spends at least 10% of its monthly income on energy-related costs.
3. **Low building energy efficiency** – the dwelling or building falls within the 43% of buildings with the lowest energy performance, according to an energy performance certificate

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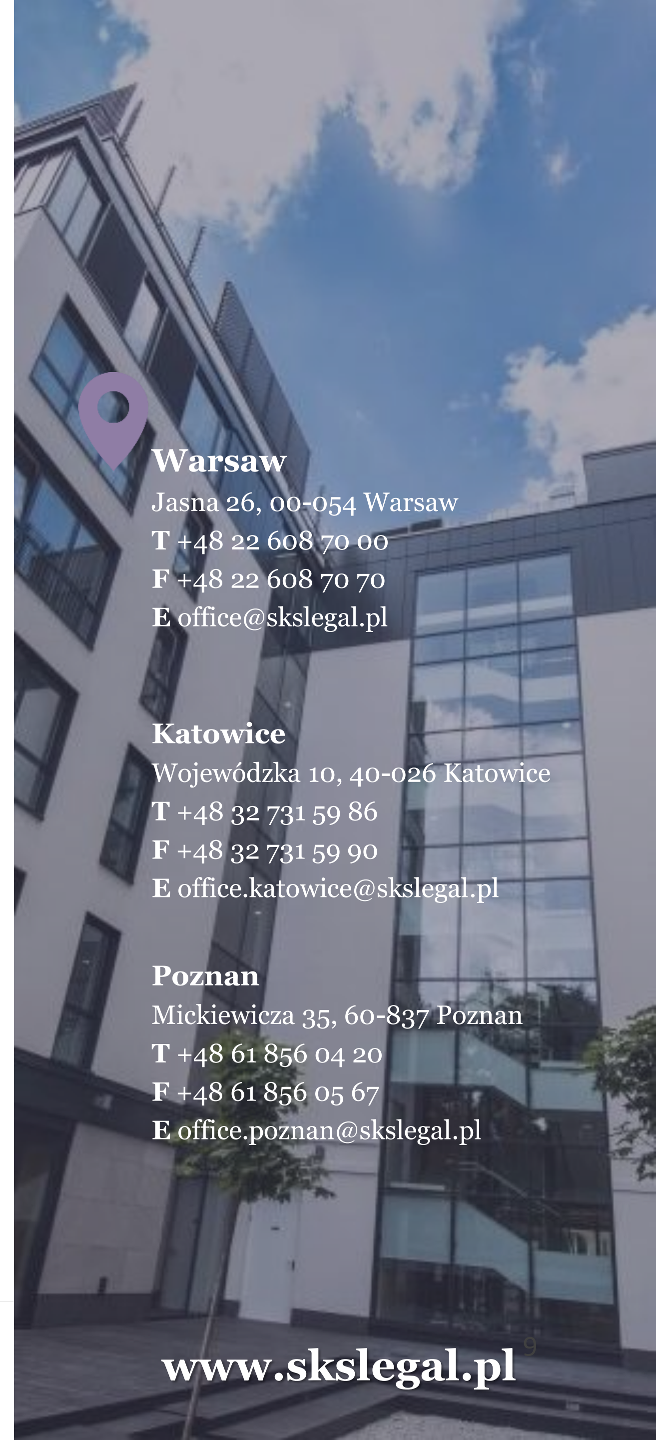

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