

THE ENERGY
REGULATION
AND MARKETS
REVIEW

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POLAND

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I OVERVIEW

Demand for primary energy sources in Poland is currently estimated at 102 million tonnes of oil equivalent (Mtoe) per annum. It is satisfied primarily by coal (42.5 per cent), oil (25 per cent), natural gas (13 per cent), lignite (12 per cent) and renewable energy sources (7.5 per cent). According to the information published by the Polish Main Statistical Office with respect to 2012, the renewable energy sources (RES) included in the Polish primary energy mix comprised solid biomass (82.16 per cent); biofuels (7.97 per cent); water (2.06 per cent); wind (4.8 per cent); biogas (1.98 per cent); and smaller shares of other sources (municipal waste as well as geothermal and solar heat), with an increasing installed capacity of wind farms.

Local production satisfies approximately 95 per cent of hard coal demand and 27.8 per cent of natural gas demand in Poland. Oil demands are primarily met by import, with only 2.8 per cent of petroleum products coming from local crude oil production. On the other hand, lignite consumption is almost fully covered with local production, which stems from the fact that lignite is not customarily transported for great distances for economic reasons.

Final energy consumption in Poland is estimated at 68.3 Mtoe per annum and it is based on energy demand of: industry (23.2 per cent); transport (26.5 per cent); household (31.7 per cent); services (12.9 per cent); and agriculture/forestry (5.7 per cent).

According to the government publication 'Energy Policy of Poland until 2030', the total consumption of primary energy in Poland should increase to 118.5 Mtoe per annum in 2030 and it should be satisfied by coal (31.0 per cent), oil (26.2 per cent),

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natural gas (14.5 per cent), lignite (8.2 per cent), renewable energy sources (12.4 per cent), and nuclear energy (6.3 per cent). At the same time, final energy consumption should increase to 84.4 Mtoe.

In line with EU policies for the reduction of greenhouse gas emissions, the Polish government continues to take measures aimed at reducing the share of high emission resources (in particular, hard coal) in primary energy consumption in Poland and achieving the envisaged 15 per cent share of RES in final energy consumption by 2020. In general, these actions are focused on the following basic aims: (1) to boost natural gas consumption by liberalising natural gas market, currently monopolised by only one single player – the Polish Oil and Gas Company (PGNiG) controlled by the State Treasury; (2) to develop a programme of exploitation of unconventional gas; (3) to intensify RES consumption; as well as (4) to promote nuclear power generation – with the flagship project of the first nuclear power plant to be developed in Poland by PGE EJ1, a subsidiary of Polish Energy Group SA.

II REGULATION

i The regulators

The primary regulation of the Polish energy industry is set forth in the following main statutes adopted by the Polish Parliament (i.e., Sejm and Senat) and thereafter approved by the President of the Republic of Poland:

- a* the 2011 Geological and Mining Law, which provides for general legal framework governing exploration for and exploitation of fossil fuels within Poland (including coal, lignite, hydrocarbons, uranium, etc.) as well as the use of underground reservoirs for storage of hydrocarbons, liquid fuels as well as the carbon dioxide handled within the carbon capture and storage projects;
- b* the 1997 Energy Law, which provides for regulation of the entire electricity and district heating sectors as well as the midstream and downstream oil and gas sectors, including production, transmission, storage and trading in liquid fuels;
- c* the 2007 Act on Reserves of Crude Oil, Petroleum Products, Natural Gas and on Procedures in case of Emergency in Security of Fuel Supply and Disturbance on Oil Market (Act on Reserves), which provides for certain obligations imposed on entrepreneurs involved in the natural gas and oil sectors, such obligations being aimed at ensuring security of natural gas, oil and petroleum products supplies;
- d* the 2006 Act on the System of Monitoring and Control over the Quality of Fuels;
- e* the 2006 Act on the Liquid Bio-components and Biofuels;
- f* the 2011 Act on Energy Efficiency;
- g* the 2000 Nuclear Law;
- h* the 2011 Act on Preparation and Implementation of Investments in Nuclear Power Facilities and Associated Investments;
- i* the 2009 Act on Investments with Respect to the Regasification Terminal in Świnoujście;
- j* the 2007 Act on Emergency Management; and

- k* the 2010 Act on special powers of the minister competent to the State Treasury affairs and their enforcement with respect to certain companies and capital groups conducting their businesses within the electricity, crude oil and natural gas sectors.

Under the statutes listed above, a number of governmental bodies, including the Council of Ministers, the Minister of Economy as well as the Minister of Environment, are authorised to lay down secondary legislation providing for more detailed regulations within the scope delegated to those bodies under the pertinent statute. Furthermore, the Council of Ministers is authorised under the 1997 Energy Law to adopt the general energy policy of Poland setting general goals to be achieved by, *inter alia*, enforcement of the existing statutes as well as adoption of new legislation.

The competence to enforce the above-mentioned legislation and policies as well as to exercise supervisory and regulatory powers over the energy market players is vested in the following bodies:

- a* the Minister of Environment, vested with power to grant authorisations for exploration for and exploitation of fossil fuels within Poland as well as for the use of underground reservoirs for storage of hydrocarbons, liquid fuels as well as the carbon dioxide;
- b* directors of mining offices, responsible for supervision over exploration and exploitation of fossil fuels as well as over the use of underground reservoirs for storage of hydrocarbons, liquid fuels as well as the carbon dioxide;
- c* the President of the Energy Regulatory Office, vested with competence to, *inter alia*, (1) grant licences for production, storage, transmission, distribution, trading and supply of electricity, heat and fuels (including natural gas) as well as liquefaction and regasification of LNG, (2) approve tariffs, (3) grant exemptions from tariff obligation, (4) approve grid codes, (5) certify operators of both gas and electricity transmission systems, (6) organise tenders for new electricity generation capacities, (7) organise tenders for energy efficiency projects eligible to benefit from the support scheme based on tradable 'white certificates', (8) grant tradable 'green' and 'red' certificates to energy producers benefiting from the support schemes addressed to RES as well as the combined heat and power plants, and (9) control compliance with a number of obligations imposed on energy market participants (including those related compulsory stocks of natural gas, coal and lignite as well as public sale of electricity and gas) and to enforce financial penalties for non-fulfilment of such obligations;
- d* the Minister of Economy and the President of the Material Reserves Agency, responsible for enforcement of compulsory stocks of crude oil and liquid fuels;
- e* the President of the Office for the Competition and Consumers Protection, responsible for enforcement of antitrust regulations (control of mergers and acquisitions, investigation and punishment for conclusion of anti-competitive agreements and/or abuses of dominant position, etc.); as well as
- f* courts considering appeals against the decisions issued by the above-mentioned authorities.

ii Regulated activities

The following types of activities performed within the territory of Poland require prior authorisation in the form of a licence:

- a* exploration for and exploitation of fossil fuels, including crude oil, natural gas, coal, lignite, uranium etc.;
- b* development and exploitation of underground storage facilities;
- c* production of electricity except for generation performed in facilities with total installed capacity not exceeding 50MW, it being specified, however, that generation in of electricity in RES or CHP installation is always subject to licence requirement;
- d* production of heat except for generation performed in facilities with total installed capacity not exceeding 5MW;
- e* production of liquid fuels;
- f* storage of gaseous fuels, liquefaction of natural gas and regasification of LNG, as well as storage of liquid fuels, except for local storage of liquid gas in installations with capacity below 1MJ/s and/or storage of liquid fuels in retail trading;
- g* transmission and distribution of fuels and energy (including electricity and heat), except for distribution of gaseous fuels in networks with capacity below 1MJ/s and distribution of heat where the total ordered capacity does not exceed 5MW;
- h* trading in fuels and/or energy (including electricity and heat) except for: (1) trading in solid fuels, (2) trading in electricity provided that trading is performed in installations with capacity below 1kV owned by the customer, (3) trading in gaseous fuels provided that the annual turnover does not exceed €100,000, (4) trading in liquid gas provided that the annual turnover does not exceed €10,000, (5) trading in heat provided that the total ordered capacity does not exceed 5MW, (6) trading in gaseous fuels and electricity performed via the commodity exchange by certain qualified participants of exchange (including brokers, commodity exchange operators, clearing house and/or National Security Depository, etc.), and (7) trading in gaseous fuels and electricity performed by clearing house and/or National Security Depository in the course of fulfilment of their duties to settle OTC contracts; and
- i* transmission of carbon dioxide.

The exploration for and exploitation of fossil fuels is possible upon obtaining both an agreement setting up the mining usufruct rights within the areas specified therein as well as the related licence granted by the Minister of Environment, such licences being in each case limited to specific areas covered by the relevant mining usufruct agreement. Subject to certain exemptions, hydrocarbon exploration and production licences are generally granted within the tender procedure which is intended to give priority to the best method for the prospection or exploration and production of the oil, which means that each bid must be evaluated on the basis of the following criteria:

- a* the technical and financial capacity of the bidder;
- b* the proposed technology to be utilised in the licensed operations, and
- c* the best remuneration for the mining usufruct right offered by the bidder within the tender process.

If either the relevant mining usufruct agreement or licence is rescinded or withdrawn, the whole authorisation is lost with respect to the area covered by the relevant documents (i.e., effectively there is a cross-default mechanism between the mining usufruct agreement and the licence). Regulations set forth in the relevant Polish legislation and included in the mining usufruct agreements provide for the following circumstances as grounds for rescission of a mining usufruct agreement and/or withdrawal of a licence:

- a* flagrant (i.e., exorbitant) violation of the terms set forth in the licence and/or other regulation that applies to the licensed activity;
- b* infringement of any regulation set forth in the 2011 Geological and Mining Law, in particular with respect to environment protection, reasonable management of mineral deposits, failure to fulfil requirements set forth in the licence, failure to commence the licensed activity within the required period and/or permanent discontinuation of such activity where the licence holder has not remedied any such infringement despite being summoned to do so by the Minister of Environment;
- c* breach of any obligation arising from the mining usufruct agreement, in particular the failure to pay the remuneration due for establishment of the mining usufruct right,
- d* a final judgment which prohibits the licence holder from conducting business activity with respect to hydrocarbon prospection/exploration;
- e* bankruptcy and/or liquidation of the licence holder; and
- f* if it is justified due to reasons related to the defence and/or security of the state and/or security of citizens.

If none of the above default circumstances occurs, expropriation is allowed exclusively under the conditions set forth in Article 21 of the Polish Constitution (i.e., solely for public purposes and for just compensation).

The remaining energy licences for operation of installations and provision of services (i.e., other than for exploration and exploitation of fossil fuels) are granted by the President of the Energy Regulatory Office at the request of the interested party provided that they prove their compliance with statutory conditions, including: (1) having a registered seat within any country belonging to the European Economic Area or the Swiss Confederation (subject to certain exemptions), (2) having the technical and financial capacity to conduct licensed activities, and (3) provided that the granting of a licence to a given entrepreneur does not pose a threat to defence or security of the Republic of Poland.

Regulatory consent of the President of the Energy Regulatory Office is also required for development of direct lines, including those connecting electricity or natural gas production installations with end-customers who are not interconnected to the transmission or distribution grid or network.

iii Ownership and market access restrictions

In general, Polish law does not impose restrictions on ownership of existing and new energy assets and these may be owned by any natural or legal person, either seated in Poland or abroad. However, as an exception to the foregoing general principle, any

new elements of the electricity and gas transmission networks used for the provision of transmission services may be owned exclusively by joint-stock companies incorporated in Poland and wholly-owned by the Polish State Treasury. The foregoing restriction arises from the fact that Polish law provides for the ownership unbundling of gas and electricity transmission system operators and it further provides that gas and electricity transmission system operators should be joint-stock companies wholly-owned by the State Treasury.

The licensed activities and services listed in Section II.ii, *supra*, may be generally conducted by any entrepreneur seated within any country belonging to the European Economic Area or the Swiss Confederation. However, as an exception to the foregoing general principle, gas and electricity transmission networks may be operated (and thus the related transmission services provided) exclusively by joint-stock companies incorporated in Poland and wholly-owned by the Polish State Treasury. Besides, in specific circumstances there might also arise certain restrictions on foreign control over licence holders, such restrictions stemming from the fact that the authority may refuse to grant a specific energy licence or may withdraw a previously granted licence if it is justified by a need related to defence or security of the Republic of Poland.

iv Transfers of control and assignments

Transfer of title to energy assets

As regards transfer of title to the regulated energy assets, such transactions are generally exempted from administrative approvals, except for common antimonopoly clearance. However, owners and operators of energy assets:

- a* used for generation and transmission of electricity, as well as for production, refinement, processing, storage, transmission and/or transshipment of natural gas, LNG, crude oil and/or petroleum products; and
- b* qualified as critical infrastructure under the 2007 Act on Emergency Management,

are subject to certain security obligations set forth in the 2007 Act on Emergency Management and the 2010 Act on Special Powers of the Minister Competent to the State Treasury affairs and their enforcement with respect to certain companies and capital groups conducting their businesses within the electricity, crude oil and natural gas sectors. In particular, owners and operators of the above-mentioned critical infrastructure are obliged to, *inter alia*, develop and enforce security and emergency plans for their assets as well as to provide the Minister of the State Treasury with all the legal acts made and resolutions adopted in the course of exercising of their powers as owners or operators of critical infrastructure, including: disposal, alienation, decommissioning, lease and/or establishment encumbrances over critical infrastructure, as well as adoption of investment, financial or strategic plans or dissolution of company. The Minister of the State Treasury has power to raise objection to and hence invalidate such legal acts or resolutions if performance or enforcement of such act or resolution would pose an actual threat to the functioning, continuity of operation or integrity of critical infrastructure.

Transfer of licences

As regards transfer of administrative authorisations to conduct regulated energy businesses, it is generally not possible under Polish law to transfer an energy licence to a

third party, except for certain situations indicated below. Therefore, if any entrepreneur would like to acquire the energy assets within the asset deal and ultimately continue business previously conducted by vendor based on those assets, it is generally required to purchase the regulated assets and apply to the respective authority for a new licence.

Nevertheless, it is possible to transfer energy licence in the course of a merger of companies effected under the 2000 Code of Commercial Companies, provided that the pertinent energy licence held by the merged company was issued after 1 January 2001. Such transfer is effected by operation of law.

Besides, in accordance with the 2011 Geological and Mining Law, the licence covering exploration or production of fossil fuels may be assigned, such assignment to be followed by a transfer of the related mining usufruct right to the space covered by the respective licence. Nevertheless, it is not admissible under Polish law to assign any share in an exploration or production licence. An assignment of the licence is subject to the prior consent of the Minister of the Environment to be granted in the form of an administrative decision issued upon application of the assignee under the following conditions:

- a* the assignee meets all the conditions required to carry out the pertinent geological/mining activity, consents to all the terms and conditions of the pertinent licence and proves its capability to fulfil all requirements related to the licensed activity;
- b* the assignee proves its rights to the geological information necessary to conduct the activity, as well as rights to the real estate and underground space used for the purpose of business activity or submits the documents stating the promise to transfer the foregoing rights to the assignee; and
- c* the Minister of the Environment determines that the assignment is not against the public interest (an assessment of this condition is left to the Minister's discretion).

Customarily, transfer of the mining usufruct right is effected simultaneously with the assignment of the licence being implemented upon the agreement concluded between the assignor and assignee upon written consent of the Minister of the Environment to be granted with the Minister's discretion. As a result, the assignment procedure shall involve:

- a* conclusion of the agreement between the assignor and the assignee concerning future transfer of: the mining usufruct related to the licence as well as the title to the real estate (subsurface spaces) where the activity shall be conducted and geological information (where necessary);
- b* submission of the application by the assignee; and
- c* issue of the pertinent consents by the Minister (if the consent to the assignment of a licence is refused twice due to reasons of public interest, such decision might be challenged by way of appeal to the Regional Administrative Court in Warsaw).

The Minister's consent to the assignment should be given within two months from the time the complete application for an assignment is submitted. The timing may be extended if the Minister demands further documents to prove the assignee's capability to fulfil all requirements related to the concession. Assignment is not related to any additional costs, except for stamp duty in the amount of 10 zlotys.

Change of control

Change of control over companies holding energy licences is not generally subject to regulatory approval of the licensing authority. However, a change of control may in specific circumstances result in withdrawal (and effectively loss) of the licence if the licensing authority determines that regulated activity conducted by the licence holder controlled by a new shareholder poses a threat to defence or security of the Republic of Poland. Change of control may also be subject to antimonopoly clearance by the President of the Office for the Competition and Consumers Protection.

III TRANSMISSION/TRANSPORTATION AND DISTRIBUTION SERVICES

i Vertical integration and unbundling

Subject to certain *de minimis* exceptions applicable to the electricity and gas distribution systems operators, Polish law provides for unbundling of electricity and natural gas transmission/distribution systems operators as well as operators of LNG liquefaction/regasification facilities (transmission, distribution and LNG operators). In particular, Polish legislation sets forth detailed regulations implementing the European accounting, management and legal unbundling rules as laid down for transmission, distribution and LNG operators in the 2009/72 Directive and 2009/73 Directive and it further provides for ownership unbundling rules applicable to electricity and natural gas transmission system operators (except for services provided with gas transmission network existing and owned by the vertically integrated companies as of 3 September 2009 where appointment of an independent system operator is available). It is also provided that the gas and electricity transmission system operators should be joint-stock companies wholly-owned by the State Treasury which results in only one electricity and one gas transmission system operator being appointed in Poland.

In practice, within the past 10 years the State Treasury separated the existing transmission assets previously owned by vertically integrated undertakings (such separation being effected in the course of either transfer of assets or division of companies controlled by the State Treasury) and established two sole-shareholder companies controlled by the State Treasury: PSE SA, which is appointed as a transmission system operator for electricity and OGP Gaz-System SA, which is appointed as transmission system operator for natural gas. OGP Gaz-System SA is also appointed as independent transmission system operator with respect to the 'Jamal' pipeline owned by the vertically integrated company named 'EuRoPol GAZ SA' – a joint venture company of the Polish company PGNiG and Russian company GAZPROM. The foregoing transmission system operators are responsible for development of the respective transmission networks within the territory of Poland as well as expansion of transborder interconnectors. OGP Gaz-System also established its wholly-owned subsidiary named 'Polskie LNG Sp. z o.o.' responsible for development of the LNG regasification facility in Świnoujście.

In turn, electricity and gas distribution systems are generally operated by separate companies belonging to vertically integrated undertakings, the most significant of them being local incumbents (ENEA in northwest Poland, ENERGA in northern Poland, TAURON in southern Poland, PGE in central and eastern Poland). Depending on the

specific situation, distribution system operators (DSOs) are appointed with respect to either certain geographic areas (especially operators belonging to incumbent vertically integrated undertakings) or specific installations (e.g., operators of local distribution grid developed within industrial zones, office complexes, etc.). Nevertheless, Polish law does not provide for exclusive rights of DSOs to provide distribution services in a particular geographic area, such right to provide distribution services being limited to installations operated by given DSOs.

ii Transmission/transportation and distribution access

In general, Polish law implements the third-party access principle within the electricity and natural gas transmission and distribution sectors. According to the foregoing principle, the transmission and distribution system operators are required, subject to certain exemptions, to render services to all market players on an equal, transparent and non-discriminatory basis. The foregoing principle is envisaged to foster competition in wholesale and retail electricity and natural gas market within the single European zone.

iii Rates

Except for transborder transmission services provided based on prices set within the capacity allocation auctions, the remuneration for access to the transmission and distribution system is generally calculated based on rates set forth in regulated tariffs, such tariffs being developed by a given system operator and subject to review and approval of the President of the Energy Regulatory Office. According to Polish law, the rates set forth in tariffs should reflect actual (so-called 'justified') costs incurred by the service provider in the course of provision of respective services as well as reasonable return. Except for the minimum rate of return for storage of natural gas which is set in the 1997 Energy Law at 6 per cent, the rates of return are not provided in legal acts. Such rates of return are established by the President of the Energy Regulatory Office in accordance with its own current regulatory policy adopted with respect to a given type of business or sector. The algorithms used for calculation of the tariff also include certain factors envisaged to encourage efficiency and cost reductions, the rate of such factors being often established by the President of the Energy Regulatory Office in accordance with its own current regulatory policy. The foregoing regulatory power vested in the regulator results in much uncertainty as to what rates are acceptable to the authority in a given year.

iv Security and technology restrictions

The energy interests and security of Poland are protected by number of instruments spread across several acts, including: (1) the power of a regulator to refuse or withdraw energy licences if it is justified by needs related to defence or security of the Republic of Poland, (2) the power of the Minister of the State Treasury to prevent or invalidate legal acts or resolutions resulting in actual threat to functioning, continuity of operation or integrity of critical infrastructure, as well as (3) numerous obligations imposed on market players, *inter alia*, the obligation to diversify natural gas supplies, maintain compulsory stocks of crude oil, petroleum products, natural gas as well as coal/lignite used for generation of electricity, develop security and emergency plans for critical infrastructure.

IV ENERGY MARKETS

i Development of energy markets

The organised trade in electricity was originally established in Poland by Towarowa Giełda Energii SA (TGE). At present, TGE is controlled by Giełda Papierów Wartościowych w Warszawie SA (the Warsaw Stock Exchange) and it operates the commodity exchange named 'Polish Power Exchange' allowing for (1) trading in electricity within the the Polish national electricity system as well as in transborder exchanges (market coupling) with the Swedish electricity system (the latter effected via the SWE-POL link developed on the seabed of the Baltic Sea); (2) trading in emission allowances as well as certificates issued under the incentive schemes addressed to RES and CHP installations as well as energy-efficiency investments; (3) trading in natural gas; and (4) entering into derivatives contracts based on commodities traded at Polish Power Exchange. TGE also renders a system designed for public auctions of power. Transactions executed at the Polish Power Exchange are cleared and settled by Izba Rozliczeniowa Giełd Towarowych SA (the Warsaw Commodity Clearing House). According to the respective grid codes, the transactions concluded within the Polish Power Exchange have priority when it comes to their physical performance via transmission system.

Apart from the Polish Power Exchange, there is one more organised system for trading in electricity in Poland named 'Platforma Obrotu Energią Elektryczną' (the Electricity Trading Platform) which is currently directly operated by the Warsaw Stock Exchange. The foregoing platform should be gradually unified with the Polish Power Exchange.

ii Energy market rules and regulation

Trading in electricity and natural gas at the Polish Power Exchange is regulated by the 2000 Act on Commodity Exchange as well as internal by-laws developed by the operator of the commodity exchange and subject to prior approval of the Polish Financial Supervisory Commission. The remaining OTC electricity and gas sale agreements are regulated by the 1997 Energy Law and secondary legislation issued thereupon as well as grid codes which are binding on market participants upon their approval by the President of the Energy Regulatory Office.

iii Contracts for sale of energy

In principle, electricity and natural gas may be traded either via commodity exchange or in the OTC contracts. However, recent amendments to the 1997 Energy Law provide that:

- a* every electricity producer is obliged to sell at least 15 per cent of its annual production via the commodity exchange and/or other organised trading platforms operated by the company operating the regulated stock exchange;
- b* furthermore, the electricity producers entitled to compensation for the stranded costs are obliged to sell their outstanding production (i.e., not subject to the abovementioned 15 per cent commodity exchange obligation) via the commodity exchange and/or other organised trading platforms operated by the company operating the regulated stock exchange and/or in public auction;

- c the above-mentioned obligations related to public sale of electricity do not apply to certain types of electricity (*inter alia*, electricity delivered via direct lines, electricity generated in installations with total installed capacity not exceeding 50MW and/or renewable energy sources and/or certain CHP installations, as well as electricity used for the producer's own purposes or for statutory tasks allocated to system operators); and
- d the entrepreneur trading in natural gas is obliged to sell via the commodity exchange and/or other organised trading platforms operated by the company operating the regulated stock exchange at least 55 per cent (in 2014 – 40 per cent) of natural gas introduced into Polish gas transmission system, it being specified that the foregoing obligation does not apply to certain quantities of natural gas (*inter alia*, compulsory stocks, natural gas exported from Poland and/or used for own purposes of the gas trader and/or used for statutory tasks allocated to system operators).

iv Market developments

As of the time being, the main goals of the Polish legislator and regulators include: (1) to strengthen competition within the natural gas market, which is now subject to the actual monopoly of PGNiG, such competition to be fostered by obligation to sell natural gas via commodity exchange as well as by adoption of more transparent and secure provisions facilitating natural gas exploration and production; (2) to support most efficient CHP and RES generation with the aim to limit at the same time the budget allocated for incentive schemes; and (3) to secure long-term profitability of large conventional system power plants by, *inter alia*, organisation of the power supply capacity market auctions.

V RENEWABLE ENERGY AND CONSERVATION

i Development of renewable energy

RES operators currently benefit from a number of incentives, including (1) an incentive scheme based on an obligation imposed on certain market players (mainly electricity suppliers and major end-users) to acquire and redeem green certificates corresponding to a pre-defined percentage of electricity sold to end-customers or pay a substituting fee (such fee working in practice as maximum level of support available to beneficiaries); (2) exemption from excise tax; (3) reduction of interconnection fees payable by certain RES energy producers; as well as (4) preferential financing, etc. In general, the current incentive system does not differentiate in the level of support depending on the RES technology applied (biomass, wind, photovoltaic, etc.) or generation capacity of a given RES installation. It does not provide RES operators with stable support as the level of support depends on the global amount of RES energy supplied to the market in a given period (thus if the overall production of RES energy is higher than the general aim set forth in the law, the level of support is lower). Therefore, it is envisaged that the current incentive scheme based on tradable green certificates will be soon replaced by auctions (type of feed-in tariffs where the price is determined in the auction) which are to limit overall budget allocated for the support system.

ii Energy efficiency and conservation

The main incentive scheme relating to energy efficiency and conservation is based on tradable white certificates, which are granted to investors that completed investments related to energy efficiency, such investments selected within tenders organised by the President of the Energy Regulatory Office. According to the 2011 Act on Energy Efficiency, certain market players (including electricity suppliers and major end-users) are obliged to acquire and redeem white certificates corresponding to a certain percentage of electricity sold to end-users or pay a substituting fee (such fee working in practice as maximum level of support available to beneficiaries). The foregoing scheme is effectively designed for the period 2012–2015 (while some of obligations should be performed by 31 March 2016). Apart from the foregoing incentive scheme, there are preferential financing schemes offered by governmental funds and banks (e.g., the National Fund for Environmental Protection and Water Management) addressed to energy-efficiency investments.

iii Technological developments

The Polish government supports the development of RES and CHP generation as well as investments aimed at energy efficiency, such investments currently benefiting from, *inter alia*, (1) incentive schemes based on tradable certificates, (2) tax exemptions, (3) reduction of interconnection fees, and (4) preferential financing, etc. For the time being, there are also plans to support clean technologies and energy efficiency, including so-called ‘distributed generation’, by way of, *inter alia*: (1) exemption of so-called ‘prosumers’ from licensing obligations, (2) the electricity supplier’s obligation to purchase electricity generated in micro-installations at a price equal to 80 per cent of the market price for electricity, and (3) support for investments in smart-grid and smart-metering. The foregoing policies should still be implemented in 2014 by adoption of the so-called ‘tripack’ (i.e., new acts: the Energy Law, the Gas Law and the Renewable Energy Sources Law).

VI THE YEAR IN REVIEW

Polish energy policy is subject to discussions and significant changes arising from a need to implement the European Third Energy Package (including 2009/72 Directive and 2009/73 Directive) as well as the intention to adopt more transparent and entrepreneur-friendly regulations ensuring proper level of security within the Polish energy market. In particular, there are pending discussions on new legislation, including so-called ‘tripack’, new acts: the Energy Law, the Gas Law and the Renewable Energy Sources Law, as well as amendments to the 2011 Geological and Mining Law that are envisaged to revolutionise regulation of the upstream hydrocarbon sector. The general aims of the foregoing draft legislation are to: foster competition within the energy market, develop application of the smart-grid technology, alleviate administrative restrictions applicable to exploration of shale gas and facilitate exploration works, and secure fiscal and security interests within the upstream hydrocarbon market, including control over ownership of the upstream hydrocarbon assets, etc. Provisions of the foregoing acts are still under discussion but the acts should be finally adopted in the second half of 2014.

VII CONCLUSIONS AND OUTLOOK

The Polish energy market is still under reconstruction stemming from the implementation of European energy and climate change policies, technological revolution, and a need to foster market competition and replace worn energy assets developed more than 40 years ago. It seems that reconstruction of the regulatory framework has been delayed in recent years (the new Energy Law, the Gas Law and the Renewable Energy Sources Law as well as amendments to the 2011 Geological and Mining Law have been discussed for more than three years now), which arises from the fact that the government is aware of the costs related to such reconstruction and it would like to prepare balanced reforms that will not become excessive burdens for the Polish industry and customers. In practice, the delayed reforms and uncertainty with respect to future regulation restrained investments in energy projects (especially shale gas exploration, development of RES installation and conventional power generation), which may have a negative impact on the future energy security, especially for generation capacities after 2016 when a number of old and worn power plants will be decommissioned. Therefore, the Polish government seems to be determined currently to complete regulatory reforms so as to ensure the progress of energy investments and competition as well as to avoid disturbances in the energy market.