

EFET objects to the plans of restricting the freedom of economic activity in Poland

The European Federation of Energy Traders¹ urges the Polish authorities once again to resign from implementing the Act amending the Excise Duty Act and other Acts (further referred to as “the Act”) in its revised form published on 18th February, as the changes proposed further reinforce the originally envisaged imposition of administratively set prices on all contracts with end-users². We highlight the fact that no stakeholder consultation was held since the first amendment was published on 21st December despite multiple objections voiced by the market participants. **We believe that the provisions of the Act cannot be considered compliant with the Polish Constitution, as they are going against the guaranteed freedom of economic activity.**

The revision of 18th February deletes provisions that have interfered with the Polish Regulatory Authority’s competence in terms of transmission and distribution tariffs setting. While this gives some comfort to the market participants in terms of URE’s independence, Polish authorities have decided to **further reinforce the provisions imposing administratively-set prices on all end-consumer contracts retroactively** as of January 2019³. Altogether these further changes mean that the impact on the end-consumer prices will be lower, while the entire financial burden will be placed on the suppliers. The proposed compensation is to be referenced against an average cost that is to be determined by the Ministry of Energy, by default making it discriminatory against some market participants and raising concerns in terms of its permissibility as state aid⁴. We also take this opportunity to highlight that **as a consequence of no proper stakeholder consultation**, the amendment still does not sufficiently clarify what price do the authorities have in mind under art. 5, creating additional anxiety on the market.

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at www.efet.org.

² Please refer back to our first [press release](#) on the same subject from 14th January.

³ The Act obliges power trading companies to conclude transactions at the prices preceding 30th June 2018 and it also forces them to revise all the contracts signed post that date and adjust them to the prices from the past. The amendment of 18th February further clarifies that the administratively-set price is to apply to all sales agreements to end consumers, irrespectively of their size or contract type.

⁴ We also highlight that the compensation payment mechanism described in the amendment on 18th February effectively means that the first payments could be made no sooner than in June, creating a tremendous liquidity gap that further deepens the uncertainty on the Polish power market.

More importantly, EFET believes that **the envisaged power market suspension in Poland is against the provisions of art. 20 of the country's Constitution that guarantees the freedom of economic activity.** While we recognize the fact that art. 22 of the Constitution allows interference with this freedom if it is in public interest, **we do not believe that the Polish authorities have proved that the Act will bring any net benefits to the society**, not least in the medium- and long-term. On the contrary, significant and retroactive interference with legally concluded contracts will cause serious damage to the energy industry, exposing companies to a risk of insolvency, disrupting the supply chain, ultimately threatening the country's security of supply. Such short-term interference with power prices will merely drain the funds that could be used for investment and they will need to be collected from the consumers in the future. Given the lack of any justification of the envisaged market interference, **we also do not believe that the Act meets the provisions of art. 31 of the Constitution** that outlines the conditions for limiting the rights and freedom guaranteed under chapter 2.

Finally, we believe that **little attention was given to analysing the causes of the observed power price growth** in the first place. Ad-hoc solution proposed by the Polish authorities will act to the detriment of the national energy sector and **we once again urge the Polish authorities to amend the provisions of the Act** narrowing down its scope to limiting the fiscal burdens placed on consumers. In this context we stress that the original proposal of 21st December deemed interference with contracts unnecessary to maintain prices for protected customers at reasonable levels⁵. We remain of the opinion that **freedom of price formation must be maintained** to ensure continued development of the Polish power industry and to avoid the aforementioned consequences of suspending the market.

⁵ see page 2 of the [original justification](#). This opinion was changed just six days later with no justification offered.