

DG Energy
Unit B2
1049 Brussels, Belgium

28 February 2020

Subject: EFET¹ response to the consultation on Poland's market reform plan

EFET welcomes the opportunity to comment on Poland's market reform plan. We believe that lack of transparency is a major flaw of the Polish electricity market that hinders its development and acts to the detriment of the consumers. Below we elaborate on some of the major problems in the context of transparency that ultimately impact the prices paid by the end-customers.

To begin with, we would like to note that the term "market failure" used under the Resource adequacy assessment section is confusing, suggesting market's inability to match supply and demand in different timeframes. The fact that that demand has moved to short-term transactions does not necessarily imply Polish market's incapacity to forecast and plan in the long-term, but rather reflects the uncertainties that market participants are facing in a highly unstable business environment. Frequent, major changes to primary and secondary legislation with no prior consultation discourage long-term investments and affect the investments already concluded or under development. We argue that such circumstances should not be seen as legitimate grounds for establishing a capacity mechanism but should encourage Polish authorities to improve transparency and stakeholder engagement.

We take this opportunity to highlight that the enforcement of an exchange trading obligation should not be seen as a measure to increase market transparency. European Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) has already provided the necessary oversight over both bilateral and cleared transactions across the EU and the Polish authorities require multiple additional reports in parallel. The obligation placed on most producers to sell over the exchange has deprived many market participants of the option to conclude non-standard transactions and has substantially increased the transaction costs². We would also like to note the speed at which the exchange trading obligations were implemented back in 2018, since the consultation period lasted two days.

Furthermore, we would like to highlight that the overview of the developments on the retail side that was provided in the implementation plan is confusing and incomplete. Prices for 2019 have been administratively and retroactively changed for some consumers, resulting in bankruptcies of smaller suppliers and uneven compensation level offered to those, who have

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

² see our consultation response on the [measures distorting the free formation of prices in Poland](#) for further reference

managed to avoid insolvency³. Such unprecedented way of market interference should not be left without a comment and a clear commitment to avoid such actions in the future should be made. EFET believes that under the existing instability of the legal environment, capacity mechanism will encourage little long-term investments in Poland on economic grounds.

When it comes to the reform of the balancing market, we applaud the proposed changes and the transparency of the process managed by the system operator. Our concern in this respect is that the major overhaul of the balancing market along the lines of the Electricity Balancing Guideline needs to be prepared within a year, giving market participants little time to adjust. Furthermore, we note that while the TSO envisages 15-minute balancing settlement periods, no such products are so far envisaged by the power exchange, which can make it very difficult for market participants to balance their positions.

Finally, we would like to highlight that the proposed implementation plan does not offer any additional clarity over the envisaged changes to the Polish legislation and essentially describes the already ongoing balancing market reform. Transparency is undoubtedly a key concern of the electricity market, which is reflected by the fact that the actual costs of the capacity mechanism has substantially exceeded the forecasts (240 PLN/MW for 2021 and 200 PLN/MW for the following years against the forecasted 100 – 180 PLN/MW). We also take this opportunity to highlight that while the cross-border participation in the capacity mechanism was set to zero for the years 2020-2023 as expected, no participation was allowed for the 2024 auctions either, limiting the potential competition even further. Therefore we believe that the Polish authorities should ensure market participants that no further legislative changes will be made without proper stakeholder engagement and clearly outline the envisaged reforms in the upcoming years.

³ see our [statement on the Polish power market suspension](#) for further reference