

Att:**Michał Kurtyka**

Ministry of Climate

Wawelska str. 52/54

00-922 Warsaw

21 September 2020

Subject: EFET¹ response to the consulted amendments to the Act on Reserve of crude oil, refinery products and natural gas

EFET appreciates the opportunity to comment on the long-awaited proposal to amend the gas storage obligations imposed under the Act on Reserve of crude oil, refinery products and natural gas² (further referred to as “the Act”). Whilst the gravity of the proposals for the Polish gas market seems to have been recognized and stakeholders have been given some time to put forward their concerns, we remain deeply unsatisfied with the outcome. We hope that the feedback received over the course of this consultation will be duly considered and reflected upon in the form of an amended proposal which kick starts the trifling level of wholesale market competition we see today.

Observations on the proposal

EFET believes that the storage obligations are counterproductive and increase the costs of gas consumed in Poland. These obligations are all the more obsolete in view of Regulation 2017/1938 (EU), under which the gas consumed by vulnerable customers is safeguarded through cooperation between the Member States under the solidarity principle.

Obligations on mandatory holding of gas storage capacity as they stand represent a significant barrier to the development of market liberalisation. **The proposed changes to the Act do nothing to remove this barrier, but instead provide an additional advantage to the already dominant state-controlled incumbent** in a way that will further prejudice the development of competition. It is in fact clear to us that a gradual removal of the obligation imposed on LNG imports does nothing in terms of reopening the effectively foreclosed Polish gas market to competition. This is so as all the regasification capacity has been fully booked for period until 2035 by the incumbent before the amended Act was published³.

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 enable the transition to a carbon neutral economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

² <https://legislacja.rcl.gov.pl/projekt/12337651> [published 31.08.2020]

³ Please see the press release of Polskie LNG for further reference: <https://www.polskielng.pl/biuro-prasowe/aktualnosci/wiadomosc/artykul/201657/>

In addition, we would like to stress that the communicated intention of the Polish authorities was to gradually adjust the storage obligations to the constantly developed gas infrastructure. In this context, we note that today **Poland has a combined import capacity that is more than double national gas demand** and it is still to be expanded once the Baltic Pipe becomes operational. Equally, **we do not understand how maintaining close to 100% dominance of the import market by one single company can benefit small and medium enterprises** as was stated in the project justification.

Recommendations

As explained, the draft Act does not address the significant concerns expressed previously by EFET⁴ or the European Commission, but effectively reinforces the position of the incumbent. We therefore believe that the **strategic volumes should simply be removed altogether**, without any need to differentiate between import routes and so avoiding any risk of further distortion.

However, if the Ministry is still of the opinion that some strategic reserves should be maintained, these should be framed in a more market-friendly and equitable manner by:

- Sizing the strategic reserves exclusively to the needs of vulnerable customers. We note in the regard that the justification of the consulted amendment states that the gradual reduction of the storage obligations will ensure a stable level of gas kept in storage at a level corresponding to the consumption level of the protected consumers. Current legislation does not allow for that, since the obligation under the Act (art. 24 subpoint 2) is calculated against the total imported volumes, regardless of the size and status of the consumers;
- Imposing the costs of maintaining such reserves exclusively on the suppliers of vulnerable customers or charging such costs via non-transmission charges applied to domestic exit points of the Polish gas transmission network.

Alternatively, at least through jointly amending:

- art. 24a subpoint 3 of the Act, so that the firm import capacities no longer need to be retained solely for fulfilling the storage obligations but can be used commercially also, and
- art. 24a subpoint 1.2 of the Act, so that the agreements with the respective TSOs & SSOs in the neighbouring countries recognise instances of force majeure, that are typically included in these types of arrangements, just as they are with the Polish system operator. Such provisions should not give basis for Gaz-System to reject admissibility of the respective gas reserves under the provisions of the Act.

⁴ Please see our letter dated 03.07.2017: <https://efet.org/Files/Documents/Downloads/EFET-statement-on-Polish-storage-obligations.pdf>

As a final remark, EFET would like to point out that nowadays two entities solely provide the gas storage services in Poland, from one capital group: Gas Storage Poland (GSP)⁵ and Polskie Górnictwo Naftowe i Gazownictwo SA (PGNiG). The burden of the gas storage obligations is particularly heavy due to the cost and non-flexibility of the gas storage products offered by GSP. EFET would also like to stress that by no means could any amendment to the so-called “ticketing service” offered by dominant state-owned company be seen as means of reopening the Polish gas market for competition. This service is a commercial activity that brings little benefit to its clients and does not leave any room for competition.

Kind Regards,



Davide Rubini,
Chairman of EFET TF CSEE-G



Doug Wood
Chair of EFET Gas Committee
Member of EFET Board

⁵ See our letters dated 02.07.2018:

<https://efet.org/Files/Documents/Gas%20Market/Security%20of%20Supply,%20Storage%20and%20LNG/EFET%20letter%20on%20the%20Polish%20storage%20accessibility.pdf> and 8 April 2019:
https://efet.org/Files/Documents/Gas%20Market/Security%20of%20Supply,%20Storage%20and%20LNG/EFET%20Follow-up%20letter%20on%20the%20Polish%20storage%20accessibility_08042019.pdf