

## Proposed new regulations for gas and fuels markets

On 7 July 2016 and 22 July 2016, the Polish Parliament adopted two separate acts providing for amendments to the Act of 10 April 1997 - Energy Law (“EL”), *i.e.*:

- the bill of amendment to act on tax on goods and services and selected other acts (hereinafter: “**VAT Amendments**”); and
- the bill of amendments to the act of 10 April 1997 – Energy Law and selected other acts (hereinafter the “**EL Amendments**”).

While the VAT Amendments has been already signed by the President and promulgated with effect as of 1 August 2016, the EL Amendments is now awaiting for signature of the President which should take place by early August 2016.

The primary objectives of the aforementioned legislation are to:

- enhance transparency and integrity of the markets related to the liquid and gaseous fuels, and
- limit VAT carousels related to trade in liquid fuels,
- mitigate certain barriers to LNG supplies to the LNG terminal in Świnoujście (“**Terminal**”) which started its commercial operations in June 2016.

### Natural gas market

As regards the natural gas market, the draft provisions of the EL Amendments propose that *i.a.*:

- Trade in LNG supplied from abroad to the delivery point in the Terminal will be exempted from the obligation to obtain the license for the foreign trade in gaseous fuels which will allow for:
  - carrying out business activities in supplies of LNG up to the Terminal without the license for the foreign trade in gaseous fuels, and
  - possible exemption of the LNG supplies delivered to the Terminal from diversification obligations such exemption to be granted to undertakings which do not conduct business activities in foreign trade in natural gas and/or in other cases specified under the envisaged new diversification regulation which will supersede the current Diversification Regulation.
- The storage obligations arising from the Act of 16 February 2007 on reserves of crude oil, refinery products and natural gas and the principles of proceeding in the event of threat to national liquid fuels security and disturbance on the oil market (“**Act on reserves**”) will apply to entities bringing in natural gas to Poland for their own use (such entities are currently exempted from the storage obligations under the Act on Reserves).
- The storage obligations arising from the Act on Reserves will not apply to entities supplying LNG to the Terminal to the extent such entities do not order regasification and/or transshipment of the LNG.
- The entity burdened with the storage obligations will not be required to book storage capacity directly with the operator of the storage facility but it will be able to fulfil the storage obligations with use of the so-called “ticket agreement” providing that the compulsory stocks required under the storage obligations will be maintained by third parties rendering such services based on market conditions; it is proposed

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that the “ticket agreement“ will be subject to approval of the President of the Energy Regulatory Office but it will not transfer administrative liability for failure to maintain compulsory gas stocks onto the service-provider which means that the entity bringing in natural gas to the territory of Poland will be still subject to administrative liability (i.e. financial penalty imposed by the President of the Energy Regulatory Office) for non-performance and/or improper performance of the “ticket agreement”.

- EL Amendments provides for that the entity burdened with the storage obligations does not have to be the owner of compulsory stocks maintained under the ticket agreement but it would be sufficient that the ticket agreement enables such entity to purchase the stored fuel upon terms and conditions specified in the ticket agreement.
- At the same time, the EL Amendment will eliminate the *de minimis* exemption (currently available upon the decision of the Minister of Energy to undertakings having not more than 100,000 customers and bringing in natural gas to the territory of Poland in volumes not exceeding 100 million m<sup>3</sup> annually) as the foregoing exemption may be abused to avoid the storage obligations by sale of natural gas at the border to number of entities relying on the *de minimis* exemption which is automatically connected with resale of the same gas within the Polish gas network.
- The President of ERO will be authorized to issue a decision imposing certain obligations on the owner of the transmission network (such as SGT EuRoPol GAZ S.A.) in order to ensure independence criteria applicable to the transmission system operator appointed over the transmission network where failure to comply with the decision may result in financial penalty imposed on the owner of the transmission network in the amount of up to 15% of revenues of from the licensed activities in the preceding fiscal year.
- Construction of the transmission gas pipeline of national or international significance will require prior consent of the minister responsible for energy affairs.



### Liquid fuels

As regards the markets in liquid fuels, the new legislation provides for the following:

*New regulations provided under the VAT Amendments*

*(with effect as of 1 August 2016)*

- The licenses for production and/or foreign trade in liquid fuels will be available exclusively to entities having permanent establishment in the territory of Poland, registered for VAT purposes and complying with compulsory reserves obligations.
- In case of production and foreign trade in liquid fuels (including LPG) it is also required to establish security in the amount of PLN 10 million.
- The President of ERO will be authorized to refuse to grant the license and/or revoke the license in situation where *i.a.* the applicant/concessionaire was convicted for crime and/or tax crime connected with businesses activity and/or an entity/person convicted for such crime and/or tax crime controls (either individually or jointly with other entities), manages and/or represents the applicant.

*New regulations provided under the EL Amendments*

*(entry into force upon signing by the President and further promulgation)*

- The license granted by the President of ERO will be required not only for production, storage, transmission, distribution and trade in liquid fuels but also for transshipment of liquid fuels with use of storage and transshipment facilities. Besides, all the entities bringing in liquid fuels to the territory of Poland (either directly or through the intermediary of the entities, except for situations where the liquid fuels are brought in to the territory of Poland in standard car fuel tanks as defined under the excise regulations) will be subject to registration requirements in Poland.
- Furthermore, the license for production and/or foreign trade in liquid fuels may expire if the licensed business activity is not conducted for the subsequent 12 months.
- The 1997 Energy Law will be supplemented with the new definition of the liquid fuels which will be supplemented from time to time by way of the secondary legislation in order to extend licensing/registration requirements to business activities covering new types of substances qualified under the new law as liquid fuels. The license will in each case define the scope of liquid fuels (list of CN codes) covered by the license.
- Licenses for production, storage, transshipment as well as foreign trade in liquid fuels will be issued by the President of ERO in cooperation with President of the Material Reserves Agency, minister competent for financial affairs, General Public Prosecutor and Chief Police Commissioner.
- Sale of liquid fuels using gas station containers (pl. *stacje kontenerowe*) will be prohibited except for situations where liquid fuels are sold to the armed forces, vessels, trains, aircrafts and/or for the purpose of investments with national significance.





- It will be prohibited to provide services related to storage, transshipment, transmission and/or distribution of liquid fuels to entities that do not hold the required license/registration.
- All the entities involved in storage, transshipment, transmission and distribution of liquid fuels will be obliged to:
  - maintain and publish the list of all energy undertakings involved in production, trading and/or bringing in liquid fuels into the territory of Poland to which storage, transshipment, transmission and/or distribution services are provided;
  - report to the President of the Energy Regulatory Office, President of the Material Reserves Agency and Minister of Finance on entities ordering services related to storage, transshipment, transmission and/or distribution of liquid fuels.
- The entities conducting business activities in liquid fuels subject to licensing and/or registration requirements under Polish law will be subject to enhanced supervision exercised by the President of ERO as well as additional reporting obligations, including compulsory reporting on:
  - monthly volumes of liquid fuels produced, brought in / exported from the territory of Poland, sold in other form or used for own purposes;
  - production, storage, transshipment, transmission and distribution infrastructure as well as means of transport and gas stations used for the purpose of business activities in liquid fuels;
  - change of control with respect to shareholders controlling at least 20% of licensee's shares.
 The President of ERO will be also vested with additional control powers.
- Compliance with licensing and registration requirements as well as other obligations and prohibitions applicable to business activities in liquid fuels (including restrictions on sale of liquid fuels using gas station containers as well as ban on the provision of services related to storage, transshipment, transmission and/or distribution of liquid fuels to entities that do not hold the required license/registration) will be also controlled by the Internal Security Agency, the Chief Tax Control Inspector, the Head of the Custom Service, the President of the Material Reserves Agency, the President of the Technical Supervision Office, the Director of the Transportation Technical Supervision Office, National Labor Inspection, as well as the Police, Prosecutors, the Commercial Inspection, Environmental Protection Inspection, Fire Service, construction supervision, metering administration and State Sanitary Inspection.
- The EL Amendments will also adjust and extend the scope of infringements of energy regulations subject to financial penalties imposed by the President of ERO. Besides:
  - production, storage, transshipment, transmission, distribution and/or trade in liquid fuels without required license shall be qualified as crime subject to fine in the amount of up to PLN 5,000,000 or imprisonment between 6 months and 5 years;
  - bringing in liquid fuels to the territory of Poland without registration will be subject to fine in the amount of up to PLN 2,500,000,
 such penalties being imposed on any persons acting on behalf of the individual and/or corporate entity which infringed the license/registration requirements. It is also projected that the person who voluntarily disclosed to the competent authorities the essential circumstances of another crime (or tax crime) connected with activity in liquid fuels sector or which allow to prevent the commission of such a crime, shall not be sentenced (or the punishment shall be extraordinarily mitigated).
- The President the Material Reserves Agency will be authorized to order technical control of the storage facilities used for the purpose of storage of intervention stocks.



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