

Legal Alert

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Draft bill on preferences in the capacity fee calculation

I. INTRODUCTION

Since 1 January 2021, customers in the territory of Poland rely on the services provided by the capacity market. The objective of these services is to ensure security and uninterrupted power supply during peak electricity consumption hours on working days from Monday to Friday. The total cost of contracting these services amounts to nearly PLN 6 billion annually and is financed from the so-called capacity fee collected by distribution and transmission system operators.

According to the information provided by the President of the Energy Regulatory Office, the capacity fee rate applicable in 2021 to end users (other than households) is **PLN 76.20/MWh¹** and is calculated on the energy volume consumed on working days between **7 a.m. and 22 p.m.²** The implementation of the capacity fee on 1 January 2021 resulted in an effective increase of electricity prices by approx. 10-20% on average.

II. DRAFT AMENDMENT TO THE POWER MARKET ACT

On 23 February 2021, the Ministry of Climate and Environment published an updated draft Bill of Amendments to the Capacity Market Act and Certain other Acts (the "**Draft**"), which is to adapt the Polish capacity market to the current EU regulations³. In addition, the Draft provides for the repeal of the provisions on discounts in the capacity fee for industrial consumers (i.e. the regulation which, due to the lack of consent from the European Commission, did not enter into force). This discount is to be replaced by a new mechanism for calculating the capacity fee, which will make the actual amount of the fee dependent on the customer's consumption profile and its impact on the necessity to apply the capacity mechanism. The new mechanism is expected to reduce the burden of the capacity fee on energy-intensive industry with stable energy consumption profile, while increasing the burden on those households, industry and services that consume energy mainly during peak energy demand hours (currently 7:00 a.m. to 10:00 p.m.) and thus, cause increased demand for electricity during these hours.

¹ Information of the President of the Energy Regulatory Office issued on 30 November 2020 (No. 63/2020) on the capacity fee rates for 2021.

² Information of the President of the Energy Regulatory Office issued on 19 November 2020 (No. 58/2020) concerning selected hours of a day during peak demand for power in the system, determined separately for the quarters of the delivery year 2021 - for the purpose of calculating the capacity fee payable by the customers referred to in article 70 sec. 1 item 2 of the Power Market Act.

³ In particular to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 2019 No. 158, p. 54).

The preferential method of calculating the capacity fee, with reductions at 83%, 50% or 17%, will be available to a broader group of end-users, irrespective of their business activities (the previous legislation provided for a reduction in the capacity fee exclusively for companies operating in specific sectors of the economy). On the other hand, consumers who are billed on a flat-rate basis (households, common parts of dwellings, consumers in tariff group R and small consumers with power up to 16 kW) will not be entitled to benefit from the preferences. Such consumers, together with the end-users consuming more energy in peak hours (in comparison to their consumption in offpeak hours) will pay more within the capacity mechanism.

The Draft is currently at the stage of consultation and negotiations with the committees of the Council of Ministers. Once adopted by the Parliament in the form of a bill, the change in the method of calculating the capacity fee is to come into force 14 days after its announcement in the Journal of Laws. The legislative procedure is expected to enter into force within the second quarter of 2021 (originally it was 1 April 2021).

For further details on the new regulation, please do not hesitate to contact us.



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