



# Restrictions on the natural gas consumption

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## PRINCIPLES FOR INTRODUCING ADMINISTRATIVE RESTRICTIONS ON ELECTRICITY AND NATURAL GAS CONSUMPTION

In the context of growing concerns about ensuring the constant supply of fuel and electricity, we present below basic information on the principles of introducing administrative restrictions on the consumption of electricity and natural gas in the territory of Poland.

It is worth emphasising that administrative restrictions on the consumption of electricity and natural gas are, in the hierarchy of proceedings, the final instrument to reduce the demand for electricity and natural gas of a non-market nature. This instrument is implemented based on previously developed restriction plans and, as a matter of principle, should only be used when market-based instruments are unable to balance electricity and natural gas demand and supply.

The basic principles to introduce electricity and natural gas restrictions are presented separately due to different legal sources and the different procedures governing the restrictions on the electricity and natural gas markets. The distinctions result, i.a. from the different characteristics of the indicated markets, including the different storage opportunities for electricity and natural gas.



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## *When can restrictions on natural gas consumption be introduced?*

Restrictions on the supply and consumption of natural gas may be introduced if **the Minister responsible for energy announces a state of emergency** as referred to in Article 11(1)(c) of Regulation 2017/1938, i.e. if at least one of the following situations occurs:

1. **a threat to the gas security of the State;**
2. **a disruption of the natural gas supply to the gas system;**
3. **sudden, unforeseen damage or destruction of facilities, installations or networks, causing an interruption of their use or loss of their features threatening the safety of the gas system operation; or**
4. **an unforeseen increase in natural gas consumption.**

The restrictions consist of limiting the maximum hourly and daily consumption of natural gas.

## *Who can introduce restrictions in natural gas consumption?*

The entity entitled to introduce restrictions on the consumption of natural gas in the area of the whole or part of the Republic of Poland is **the Council of Ministers**, and restrictions are introduced **by way of a regulation issued at the request of the Minister responsible for energy (publication in the Journal of Laws)**.

Information on restrictions are made public by:

1. the website or in a manner customarily adopted in a given locality by the gas system operator or the energy company performing the function of the gas system operator;
2. a radio announcement broadcast by Programme 1 of the Polish Radio and posted on the website of the gas transmission system operator (OGP Gaz-System S.A.) which is announced at least 10 hours before the introduction of a given supply degree (see below) and includes information on the time of that degree starts, whereby announcements on supply degrees in force:
  - a) from 6 a.m. to 6 p.m. of a given day - are announced until 8 p.m. at the latest of the previous day;
  - b) from 6.00 a.m. on a given day to 6.00 a.m. on the following day - shall be announced until 8.00 a.m. at the latest on a given day.

For differentiated restrictions introduced for particular consumers, the gas transmission system operator (OGP Gaz-System S.A.) must notify these consumers individually in writing or by other means of communication, in a manner and within a timeframe that has been agreed upon between the operator and the consumer.



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## *Who is covered by the restrictions on natural gas consumption?*

Restrictions on natural gas consumption are applied to all natural gas consumers with the exception of the following categories of protected consumers:

### **A. protected consumers in the case of an announcement of supply degrees from 1. to 11. (on a scale of 1-12):**

1. household consumers of natural gas;
2. those connected to the gas distribution network, i.a.:
  - a) entrepreneurs within the meaning of Art. 4(1) and (2) of the Act of 6 March 2018 - Entrepreneurs Law,
  - b) entities engaged in production activities in agriculture in the scope of agricultural crops and animal husbandry, horticulture, vegetable farming, forestry, and inland fishing,
  - c) farmers renting out rooms, selling home-cooked meals, and providing other services on farms related to the stay of tourists,
  - d) producers who are farmers producing less than 100 hectolitres of wine during the economic year, as referred to in Art. 17(3) of the Act of 12 May 2011 on Production and Bottling of Wine Products, Trade in Wine Products and the Organisation of the Wine Market,
  - e) farmers engaged in the sale referred to in Art. 20(1c) of the Act of 26 July 1991 on Personal Income Tax (sale of low-processed products under the conditions laid down in that Act),
  - f) Rural Housewives' Circles operating under the Act of 9 November 2018 on Rural Housewives' Circles which meet the conditions referred to in Art. 24(1) of that Act,  
- on the condition that the **contracted capacity** at the point of consumption of natural gas from the gas system, or the sum of the points of consumption of that gas from the gas system supplying the consumer at one address, **does not exceed 710 kWh/h**,
3. entities providing health care services within the meaning of the Act of 27 August 2004 on health care services financed from public funds,
4. organisational units of social care within the meaning of Art. 6 item 5 of the Act of 12 March 2004 on social care,
5. night shelters and heating facilities referred to in Art. 48a par. 3 and 4 of the Act of 12 March 2004 on Social Aid,
6. organisational units of support for the family and the foster care system within the meaning of Art. 2 section 3 of the Act of 9 June 2011 on support for the family and the foster care system,
7. units of the State Medical Rescue System and units cooperating with that system within the meaning of the Act of 8 September 2006 on the State Medical Rescue Services,
8. entities constituting an element of the educational system referred to in Art. 2 pts. 1, 2, 7, and 8 of the Act of 14 December 2016 - Education Law,
9. public administration bodies within the meaning of Art. 5 § 2 pt. 3 of the Act of 14 June 1960 - Code of Administrative Procedure and the offices serving them,
10. entities providing nurseries and children's clubs, within the scope of this activity, as well as day care providers referred to in the Act of 4 February 2011 on the care of children aged up to 3,

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11. water and sewerage companies within the meaning of Art. 2 pt. 4 of the Act of 7 June 2001 on collective water supply and collective sewage disposal (Journal of Laws of 2020, item 2028),
  12. entities responsible for waste management, to the extent to which they perform the tasks referred to in Art. 3 (1) item. 2 of the Act of 14 December 2012 on waste,
    - connected to a gas distribution or transmission network
  13. natural gas consumers, insofar as they are engaged in the production of heat for a consumer referred to in points 1 to 12, consuming heat in the period from 1 September to 31 May for central heating, domestic hot water, ventilation, and the technology of steam and hot water, or in the supply of heat to that consumer if the installations of those natural gas consumers cannot be supplied with fuel other than natural gas.
- B. consumers protected from restrictions in the case of an announcement of the 12th supply degree:**
1. the entities indicated in points A.1, A.3-7, A.10-12 above; and
  2. the entities indicated in point A.13 - with regard to which they produce heat for the consumers indicated in points A.1, A.3-7, A.10-12 above, consuming heat in the period from 1 September to 31 May for central heating, hot water, ventilation, and the technology of steam and hot water, or supplying heat to such consumers if the installations of these natural gas consumers cannot be supplied with fuel other than natural gas.

**C. consumers subject to protection from restrictions in the case of an announcement of supply degrees from 1. to 12:**

1. entrepreneurs of special economic and defence importance within the meaning of Art. 3 of the Act of 23 August 2001 on the organisation of tasks for national defence performed by entrepreneurs connected to the gas distribution or transmission network in the period of a state of defence readiness in times of crisis or a state of defence readiness in time of war, referred to in the regulations issued under Art. 6(2)(3) of the Act of 21 November 1967 on universal defence obligations of the Republic of Poland;
2. consumers using natural gas to produce electricity in a generating unit that has been designated under Art. 11(7) of Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of the natural gas supply and repealing Regulation (EU) No 994/2010 (Dz. Urz. EU L 280, 28.10.2017, p. 1), in the regard that makes this unit possible to operate within the scope and timeframe required by the electricity transmission system operator, including the possibility of operating the electricity generation unit with another fuel than natural gas.

In the case of a deficit of natural gas in the natural gas system, including a deficit caused by the occurrence of extreme cold outside temperatures during the period of peak demand for natural gas in the natural gas system, it will be supplied to consumers for as long as and to the extent necessary to ensure the safe operation of the gas system.

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## *How to fulfil the obligation of natural gas consumption restrictions and what are the plans to introduce restrictions?*

If restrictions are introduced on natural consumption, the consumer realises the obligation of restrictions, in principle, by reducing its natural gas consumption on its own to a level no higher than the maximum natural gas consumption for the announced degree of supply, as defined in the plan to introduce restrictions developed for this consumer (hereinafter "**Plan**").

The Plans for particular consumers are developed by the gas system operators. The Plans must be updated and submitted to the ERO President for approval each year by 15 November. The Plans specify the **maximum hourly and daily volumes of natural gas consumption by particular consumers connected to their network for particular supply degrees** (on a scale of 1-12) together with the duration of these restrictions.

The maximum hourly and daily volumes of natural gas consumption by particular consumers connected to their network for particular supply degrees are determined as follows:

1. **The first** supply degree corresponds to the **maximum contracted capacity** that the consumer can use at the relevant exit point.
2. **The second** supply degree corresponds to the **average hourly and daily volume of natural gas** taken by the consumer at the relevant exit point during the period from 1 July of the previous year to 30 June of the year in which the Plan was drawn up (excluding days for which the daily consumption at the exit point from the gas system was equal to 0 kWh/day).
3. Supply degrees **from three to nine** determine **proportionally decreasing hourly and daily values**.

4. **The tenth** supply degree corresponds to the **minimum hourly and daily amount of natural gas** consumed by the consumer at a given exit point which does not cause a threat to the safety of persons or damage or destruction of technological facilities (this amount, determined by the consumer, may not exceed the highest of the minimum hourly and daily natural gas consumption determined for each year in the 3 years previous to 1 July of the year in which the Plan was drawn up, excluding days on which the hourly and daily volume of natural gas taken by the consumer at the relevant exit point from the gas system did not exceed 15% of the value specified for that consumer in the second supply degree, determined for a given year).
5. **The eleventh** supply degree corresponds to **zero hourly and daily volumes of natural gas** consumed by the consumer at the given exit point from the gas system.
6. **The twelfth** supply degree corresponds to **zero hourly and daily natural gas volumes consumed at a given exit point from the gas system by a consumer, including protected consumers** (categories of protected consumers as indicated above).

Gas system operators must **inform consumers** of the content of the approved Plan, and **the consumption volumes specified in the approved Plans for particular supply degrees must become an integral part of sales contracts, contracts for transmission or distribution of natural gas, and comprehensive contracts**.



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## *What are the sanctions for non-compliance with the obligation to restrict natural gas consumption?*

Entities that do not comply with restrictions on natural gas consumption are subject to an administrative **monetary penalty in an amount depending on the amount of natural gas consumed during the period of exceeding the capacity resulting from the introduced restrictions.**

Excess power is calculated in the case of excess power:

1. hourly – as a product of the maximum power registered by the measurement system, over the power resulting from the introduced restrictions, the number of hours in the month in which the restrictions were in force, and **four times the fixed charge rate for the transmission service** for a given tariff group to which the consumer would be qualified based on the power established for this consumer in the first power supply degree;
2. hourly and daily power – as a product of the maximum power registered by the metering system, over the power resulting from the introduced restrictions, the amount of hours in the month in which restrictions were in force and **eight times the fixed charge rate for the transmission service** for a given tariff group to which the consumer would be qualified based on the power established for this consumer in the first supply degree.

The penalty is imposed by the President of the ERO by way of a decision which can be appealed to the District Court in Warsaw – the Court of Competition and Consumer Protection. The appeal must be submitted within a 2-week time limit. An appeal against the first instance judgment and a cassation appeal to the Supreme Court are admissible in the proceedings.

## *Potential risk of introducing EU instruments which may cause the introduction of the restrictions under Polish law*

The Council of the EU has adopted a regulation<sup>1</sup> on the possibility of introducing gas demand reductions and a Union alert. The Regulation introduces the possibility of so-called **voluntary reductions in gas demand** by Member States of at least 15% between 1 August 2022 and 31 March 2023 compared to the average consumption between 1 August and 31 March in the five years before this regulation enters into force. **However, if the application of the voluntary restrictions proves to be insufficient** and there would be a significant risk of a critical gas supply deficit or an exceptionally high gas demand, the European Commission would be empowered to introduce **a Union alert**. During the Union alert's enforceability, EU Member States will be obliged to ensure the above-mentioned reduction in gas consumption by 15% (with the possibility of requesting a derogation through an EC decision to reduce the restrictions by 5% where a state does not significantly contribute to increasing gas supplies to other states or due to the lack of interconnections with other Member States or their limited scope). Member States are free to choose reduction measures for gas consumption, but their application must not cause the distortion of competition in the internal gas market, security of supply, and **for protected consumers, gas supply must be uninterrupted.**

<sup>1</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (Official journal of the European Union L from 2022 Nr 206).

### *How to prepare for the potential introduction of natural gas consumption restrictions?*

To prepare for the potential introduction of restrictions, consumers should, in particular:

1. Identify the status of particular facilities under the natural gas restrictions regulation (the existence of premises qualifying the facility as protected from restrictions).
2. Analyse contracts and correspondence with the distribution system operator / seller for compliance with restrictions regulations and, in the case of inconsistencies, take action to properly provide the status of the facility in the contractual documentation and the submitted Plans (concerning, in particular, the inclusion of the protection against restrictions).
3. Ensure that procedures allow for restrictions to be implemented if they are introduced, including the protection of facilities operating on alternative fuels, the definition of facilities that can/should be supplied with natural gas if particular supply degrees are announced, the appropriate adjustment of contracts with contractors (including introducing the obligation to comply with restrictions by those to whom natural gas is made available (e.g. tenants) and the rules of liability for non-compliance, as well as introducing or clarifying the rules of liability for lack of supply/services during the period of restrictions), the clarification of staffing and security on the facility area procedures, etc.

The Infrastructure and Energy Department team of our law firm are happy to provide support in conducting the above processes.



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