



Polish hydrogen law – draft amendment to the Energy law

The Ministry of Climate and Environment has submitted for legislative works a draft amendment to the Energy Law and certain other laws¹, the main object of which is **to create a regulatory framework for the functioning of the hydrogen market in Poland.**

These changes will establish the rules for functioning of the hydrogen market at least until the implementation of analogous provisions of European Union law², give impetus to the development of this market in accordance with the Polish hydrogen³ and fulfil one of the milestones of the National Plan for Recovery and Resilience (Pl. *Krajowy Plan Odbudowy i Zwiększenia Odporności*) regarding the improvement of conditions for the development of hydrogen technologies and other decarbonised gases (reform B.2.1). The above-mentioned Polish strategy assumes, i.a. achieving the production of approx. 200,000 tonnes of low-carbon hydrogen per year by 2030 and the widespread use of low- and zero-carbon hydrogen in many sectors of the economy (energy, heating, transport, industry).

¹ Draft amendment to the Energy Law and certain other acts (No. UD 382), <https://legislacja.rcl.gov.pl/projekt/12365500/katalog/12921264#12921264>

² The projected regulatory changes at the European Union stage were explained in our earlier [SK&S report from 26 October 2022 about the EU package to decarbonise the gas market, promote hydrogen and reduce methane emissions](#).

³ Resolution No. 149 of the Council of Ministers of 2 November 2021 on the adoption of the Polish Hydrogen Strategy until 2030 with an outlook until 2040 (Pl. *Polska strategia wodorowa do roku 2030 z perspektywą do 2040 r.*).

The key changes foreseen in the draft amendment include

- introduction in the Energy Law of defined legal terms necessary for the development and operation of the hydrogen market in Poland, including:
 - a) extending the fuel catalogue to include hydrogen (hydrogen will be a fuel type besides those so far included in such definition: solid, liquid and gaseous fuels),
 - b) defining particular types of hydrogen (low carbon, electrolytic and renewable),
 - c) the introduction of new operators for hydrogen activities: hydrogen system operator (HSO), hydrogen combined system operator (HCSO) and hydrogen storage system operator (HSSO),
 - d) defining and regulating new activities – storage of energy as hydrogen and transmission of hydrogen via hydrogen networks,
 - e) defining electrolytic conversion service – HSO, HSSO, gas transmission system operator (TSOg) and gas distribution system operator (DSOg) will be obliged to provide the service to energy companies;
- regulation of hydrogen activities, including their licensing;
- definition of new types of agreements: transmission and storage of hydrogen services (Pl. *umowa świadczenia usług przesyłania i magazynowania wodoru*) and hydrogen connection agreement (Pl. *umowa o przyłączenie do sieci wodorowej*);
- empowering the minister in charge of energy to define, by way of a regulation, detailed conditions for the functioning of the hydrogen system.

The draft allows TSOg and DSOg to play the role of HSOs, due to the possibility of transmission of hydrogen through gas networks. The issues of so-called unbundling and third party access are explained in the table below.

| Selected issues | Relation to the gas and hydrogen market |
|--------------------|---|
| Unbundling | <ul style="list-style-type: none">the TSOg, DSOg, gas combined system operator (GCSO), HSO, HTSO and HSSO shall not be allowed to carry out the activity related to production, generation or trading of gaseous fuels or hydrogen and its carrying out under contract to other energy companiesthe TSOg and DSOg shall be allowed to fulfil the role of the HSO |
| Third party access | <ul style="list-style-type: none">the TSOg, DSOg or HTSO, as appropriate, shall be obliged to connect to the gas or hydrogen network on a non-discriminatory basis if the technical and economic conditions for the connection to the network exist and the entity seeking the connection fulfils those conditionsobligation to enable a change of gas fuel or hydrogen supplier |



Comparison of obligations to obtain a licence for particular gas and hydrogen market activities

| Activity | Gas market | Hydrogen market |
|--------------------------------------|---|--|
| Generating | <ul style="list-style-type: none"> in general, there is no obligation to obtain a licence in order to generate gaseous fuels; a licence is, however, required for the exploration, recognition and extraction of fossils, including, i.a. hydrocarbons, under the provisions of the Geological and Mining Law | <ul style="list-style-type: none"> no obligation to obtain a licence (including for hydrogen generation by electrolysis) |
| Transmission and distribution | <ul style="list-style-type: none"> the obligation to obtain a licence for the transmission or distribution of gaseous fuels (excluding: distribution of gaseous fuels through a network with a capacity of less than 1 MJ/s) | <ul style="list-style-type: none"> obligation to obtain a licence for hydrogen transmission |
| Storage | <ul style="list-style-type: none"> the obligation to obtain a licence for the storage of gaseous fuels in storage facilities as well as for the storage or transshipment of liquid fuels in liquid fuel storage facilities or liquid fuel transshipment facilities, excluding the local storage of liquid gas in facilities with a bandwidth below 1 MJ/s | <ul style="list-style-type: none"> an obligation to obtain a licence in order to store more than 55,000 Nm³ of hydrogen (hydrogen storage facilities with a capacity above 55,000 Nm³ will also require registration) |
| Trade | <ul style="list-style-type: none"> the obligation to obtain a licence for trading in gaseous fuels (with the exemptions set out in Article 32(1)(4) of Energy Law., concerning, i.a. trading in gaseous fuels not exceeding the equivalent of EUR 10,000, when trading is carried out on the Polish Power Exchange (Pl. <i>Towarowa Gielda Energii</i>), and trading carried out by an energy cooperative, as part of the activities conducted for the benefit of all customers belonging to that cooperative) | <ul style="list-style-type: none"> the obligation to obtain a licence to trade hydrogen (excluding hydrogen trading with an annual value not exceeding EUR 100 000) |

Conducting hydrogen activity without the required licence

An entity which, on the day of entry into force of the amendment, will be conducting economic activity in the field of hydrogen storage, transmission, trade and supply via direct hydrogen pipelines - which under the amendment requires a licence - will be required to obtain a licence within 12 months from the date of entry into force of the amendment. The licence will be issued by the President of the Energy Regulatory Office (Pl. Prezes Urzędu Regulacji Energetyki), and until the licence is issued, the entity applying for the licence will be able to conduct the above- mentioned activity under the existing rules.

Conducting economic activity in the field of hydrogen storage, transmission, trading or supplying hydrogen through direct hydrogen pipelines without a required licence will be punishable by a fine of up to 5 000 000 PLN or imprisonment of between 6 months and 5 years.

Entry into force of the amendments

The draft amendment is at an early legislative stage. According to the current draft, the changes are to enter into force 3 months after the date of publication in the Journal of Laws of the Republic of Poland.



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