

**EFET calls upon the Polish government to renounce the law restricting the freedom of economic activity of the Polish power market participants**

The European Federation of Energy Traders<sup>1</sup> calls upon the Polish authorities to refrain from implementing the revised Act amending the Excise Duty Act and other Acts (further referred to as “the Act”) published on 18<sup>th</sup> February, as it further reinforces the originally envisaged imposition of administratively set power prices on all contracts with end-users<sup>2</sup>. **We believe that the provisions of the Act cannot be considered compliant with the Polish Constitution, as they are going against the guaranteed freedom of economic activity.**

Through the implementation of the Act, Polish authorities introduced **administratively-set prices on all end-consumer contracts that are to be applied retroactively** as of January 2019<sup>3</sup>. EFET believes that **the envisaged power market suspension in Poland is against the provisions of Art. 20 of the country’s Constitution that guarantees the freedom of economic activity.** While we recognise the fact that Art. 22 of the Constitution allows interference with this freedom if it is in public interest, **we do not believe that the Polish authorities have proved that the Act will bring any net benefits to the society.** On the contrary, substantial retroactive interference with legally concluded contracts will cause serious damage to the energy industry of the country, exposing companies to a risk of insolvency, disrupting the supply chain, and ultimately - threatening the country’s security of supply.

Given the lack of any justification of the market interference, **we also do not believe that the Act complies with the provisions of Art. 31 of the Constitution**, outlining the conditions for limiting the rights and freedom guaranteed under chapter 2.

We also highlight the fact that no stakeholder consultation was held since the first amendment was published on 21<sup>st</sup> December, despite multiple objections to the adoption of the Act were voiced by the market participants. **Due to the lack of a proper stakeholder consultation**, the amendment still does not clarify the price that the

<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at [www.efet.org](http://www.efet.org).

<sup>2</sup> Please refer back to our first [press release](#) on the same subject from 14<sup>th</sup> January.

<sup>3</sup> The Act obliges power trading companies to conclude transactions at the prices preceding 30<sup>th</sup> June 2018 and it also forces them to revise all the contracts signed post that date and adjust them to the prices from the past. The amendment of 18<sup>th</sup> February further clarifies that the administratively-set price is to apply to all sales agreements to end consumers, irrespectively of their size or contract type.

authorities have in mind under Art. 5, increasing the degree of power market uncertainty in Poland.

The proposed compensation fee is to be referenced against an average cost that is to be determined by the Ministry of Energy. The compensation fee will therefore by default discriminate against some market participants. As a consequence, a large financial burden will be placed on the suppliers. This raises some serious **concerns in terms of its permissibility as state aid**<sup>4</sup>.

It is worth noting that the provisions set out in the previous version of the Act, which interfered with the Polish Regulatory Authority's competence in terms of transmission and distribution tariffs setting, were eliminated from the revised Act. This gives some reassurance to the market participants regarding URE's independence.

Finally, we believe that **little attention was given to analysing the causes of the observed power price increase** in the first place. The ad-hoc solution proposed by the Polish authorities will act to the detriment of the national energy sector and **we once again urge the Polish authorities to amend the provisions of the Act**. The amendment scope could be narrowed down to limiting the fiscal burdens placed on consumers through reducing the excise tax on electricity as originally planned.

In this context, we stress that the original proposal of 21<sup>st</sup> December deemed interference with contracts unnecessary to maintain prices for protected customers at reasonable levels<sup>5</sup>. We remain of the opinion that **freedom of price formation must be maintained** to ensure continued development of the Polish power industry and to avoid the aforementioned consequences of suspending the market.

<sup>4</sup> We also highlight that the compensation payment mechanism described in the amendment of 18<sup>th</sup> February 2019 effectively provides for the first payments to be made as of June, creating a tremendous liquidity gap that exacerbates the uncertainty over functioning of the Polish power market.

<sup>5</sup> see page 2 of the [original justification](#). This opinion was changed just six days later with no justification offered.