

**Text of the Act finally enacted after taking into consideration the amendments proposed
by the Senate**

CAPACITY MARKET ACT

of 8 December 2017¹

DIVISION I

General provisions

Chapter 1

Subject matter of the Act

Article 1. 1. This Act sets out the capacity market organization and the rules for the provision of service consisting in readiness to supply electrical power to the electricity system and to supply such power to the system during stress periods.

2. The purpose of this Act is to ensure medium-term and long-term security of electricity supply to final customers in a cost-effective, non-discriminatory and sustainable manner.

Chapter 2

Definitions

Article 2. 1. As used herein, the following terms shall have the definitions assigned to them below:

- 1) “additional auction” means a capacity auction in which the delivery period covers a quarter of a calendar year;
- 2) “main auction” means a capacity auction in which the delivery period covers a calendar year;
- 3) “capacity auction” means an auction in which the capacity provider offers the capacity obligation to the operator throughout the delivery period;
- 4) “capacity provider” means an owner of the capacity market unit, who owns physical

¹ This Act amends the following acts: Energy Law of 10 April 1997, Environmental Protection Law of 27 April 2001, Act of 29 June 2007 on rules for payment of costs incurred by generators in connection with early termination of long-term power and electricity sales contracts as well as Renewable Energy Sources Act of 20 February 2015.

units forming a capacity market unit or who is an entity authorized by the owners of such physical units to dispose of them on the capacity market;

- 5) “physical unit” means an isolated set of technical equipment together with metering points in the system assigned thereto;
- 6) “interconnector physical unit” means a technical component connecting the system to the electricity transmission grid in another EU member state, supplying power to the system;
- 7) “demand side response physical unit” means a physical unit supplying power to the system by means of a temporary reduction in electricity input from the electricity grid as a result of the use of:
 - a) controlled take-up or
 - b) generating unit other than a separate physical unit referred to in Article 3 subparagraph 43 of the Energy Law of 10 April 1997 (Journal of Laws of 2017, items 220, 791, 1089, 1387 and 1566), or an electricity storage facility, together with the equipment and installations of the final customer;
- 8) “generating physical unit” means a physical unit which is a generating unit referred to in Article 3 subparagraph 43 of the Energy Law of 10 April 1997 or an electricity storage facility;
- 9) “existing generating physical unit” means a generating physical unit connected to the system and commissioned before the start of the general certification for the purposes of which the unit will be notified;
- 10) “planned generating physical unit” means a unit other than that referred to in paragraph 9 which is to be connected to the system and commissioned before the commencement of the delivery period which will cover the main auction for the purposes of which the unit will be notified;
- 11) “planned demand side response unit” means one or more demand side response physical units in respect of which not all details required for registration or issue of a certificate for a demand side response physical unit are known;
- 12) “capacity market unit” means a generating capacity market unit and a demand side response capacity market unit;
- 13) “generating capacity market unit” means a generating physical unit or a group of such units or a foreign generating physical unit or a group of such units, which has obtained a certificate for participation in the capacity auction;

- 14) “demand side response capacity market unit” means a physical demand side response unit or a group of such units or a foreign physical demand side response unit or a group of such units, which has obtained a certificate for participation in the capacity auction;
- 15) “foreign physical unit” means a foreign generating physical unit and a foreign demand side response unit;
- 16) “foreign generating physical unit” means a generating physical unit located in an EU member state whose electricity grid is directly connected to the system;
- 17) “foreign demand side response unit” means a physical demand side response unit located in an EU Member State whose electricity system is directly connected to the system;
- 18) “electricity storage facility” means an electricity storage referred to in Article 2 subparagraph 17 of the Renewable Energy Sources Act of 20 February 2015 (Journal of Laws of 2017, items 1148, 1213 and 1593), which has the capacity to supply electrical power to the system;
- 19) “gross achievable capacity of a generating physical unit” means a test-approved maximum active power at which a generating physical unit may operate at nominal parameters for a period not shorter than 4 consecutive hours, without any prejudice to the sustainability of the unit;
- 20) “net achievable capacity of a generating physical unit” means gross achievable capacity of a generating physical unit less power consumed by its equipment and technology systems necessary for generating electricity or electricity and heat;
- 21) “achievable capacity of a physical demand side response unit” means the volume of the maximum temporary reduction in electricity input from the electricity grid by a physical demand side response unit, as measured at all metering and settlement points of the unit at points of connection to the grid;
- 22) “net achievable capacity of a capacity market unit” means the sum of net achievable capacities of all generating physical units or the sum of net achievable capacities of all physical demand side response units comprised in a capacity market unit;
- 23) “capacity obligation” means a capacity provider’s obligation to guarantee, during delivery periods, readiness to deliver specified electrical power to the system through a capacity market unit and to supply specified electrical power to the system during stress periods;

- 24) “final customer” means a final customer purchasing electricity, as referred to in Article 3 subparagraph 13a of the Energy Law of 10 April 1997;
- 25) “delivery period” means a calendar year or a quarter for which a capacity auction is held;
- 26) “stress period” means a full hour in which the excess of capacity available to the operator within the daily work system planning process is lower than the required value determined in accordance with Article 9g(4)(9) of the Energy Law of 10 April 1997;
- 27) “operator” means an operator of the electricity transmission system or the electricity interconnected system operator referred to in Article 3 subparagraphs 24 or 28 of the Energy Law of 10 April 1997;
- 28) “distribution system operator” means an operator of the distribution system referred to in Article 3 subparagraph 25 of the Energy Law of 10 April 1997;
- 29) “metering point” means a place in the grid, equipment or installation where flowing electricity is measured, as specified in a grid connection agreement or in an electricity transmission or distribution agreement;
- 30) “distribution grid” means an electricity distribution grid referred to in Article 3 subparagraph 11b of the Energy Law of 10 April 1997;
- 31) “transmission grid” means an electricity transmission grid referred to in Article 3 subparagraph 11a of the Energy Law of 10 April 1997;
- 32) “system” means an electricity system referred to in Article 3 subparagraph 23 of the Energy Law of 10 April 1997;
- 33) “tariff” means a tariff referred to in Article 3 subparagraph 17 of the Energy Law of 10 April 1997;
- 34) “capacity market participant” means the operator, the distribution system operator, the settlement body, the owner of a physical unit or an entity authorized by the same and the capacity provider.

2. Whenever this Act refers to net achievable capacity or gross achievable capacity of a physical unit, this should also be construed as net achievable capacity of a physical demand side response unit.

DIVISION II

Capacity market organization

Chapter 1

General provisions

Article 3. 1. The operator shall carry out:

- 1) general certification – for the purpose of gathering information about physical units and entering them in the capacity market register hereafter referred to as the “register”;
- 2) certification for the main auction – for the purpose of creating capacity market units and allowing them to participate in the main auction;
- 3) certification for additional auctions – for the purpose of creating capacity market units and allowing them to participate in one or more additional auctions.

2. The general certification process shall commence in the first week of each year and shall end no later than in the tenth week of the same year.

3. The certification process for the main auction shall start 14 weeks before the main auction and shall end no later than in the fourth week preceding the main auction.

4. The certification process for additional auctions shall start 16 weeks before the additional auctions and shall end no later than in the fourth week preceding the additional auctions.

5. In the certification process the distribution system operator shall cooperate with the operator in the manner and within the timeframe specified in the capacity market rules referred to in Article 83. The distribution system operator whose distribution grid which is not directly connected to the transmission grid shall cooperate with the operator through the distribution system operator to whose grid it is connected, and which is also directly connected to the transmission grid.

6. The operator shall announce the dates of the start and end of the certification processes referred to in paragraph 1 on its website.

Article 4. 1. The operator shall carry out an auction of the rights to offer the capacity obligation in capacity auctions in respect of capacity market units consisting of foreign physical units, hereinafter referred to as “preliminary auctions”.

2. Preliminary auctions shall be carried out after the entry into force of the Regulation

referred to in Article 34(1), but no later than two weeks before the certification for the main auction.

3. The preliminary auction, the main auction and the additional auctions shall be carried out in electronic form via a dedicated IT system.

4. The operator shall announce the date of the preliminary auction, the main auction and the additional auctions on its website.

5. The capacity provider shall affix a qualified electronic signature to bids and statements submitted in the course of the preliminary auction, the main auction and the additional auctions.

Article 5. The President of the Energy Regulatory Office, hereinafter referred to as the “ERO President”, may require the capacity market participants to submit documents or information relevant to the evaluation of the correctness of the certification process or capacity auction.

Chapter 2

Participation of foreign capacities in the capacity market

Article 6. 1. The operator shall enable participation of capacity located in the electricity systems of an EU member state whose electricity system is directly connected to the system by:

- 1) allowing capacity market units consisting of interconnector physical units to participate in capacity auctions or
- 2) organizing preliminary auctions separately for each of the zones referred to in paragraph 6 and allowing capacity market units consisting of foreign physical units to participate in capacity auctions.

2. One of the solutions specified in paragraph 1 shall be applied with respect to each of the zones referred to in paragraph 6 under an agreement concluded by the operator and the operator of the transmission system directly connected to the system.

3. In the case referred to in paragraph 1(1), the operator shall conclude with the operator of the electricity transmission system directly connected to the system an agreement setting out in particular the terms of:

- 1) determining and agreeing on the volume of power in the capacity auction by a capacity market unit consisting of interconnector physical units;
- 2) participation in the capacity auction, including submission of bids in the capacity

auction and creating the capacity obligation referred to in subparagraph 1;

- 3) performing and settling performance of the capacity obligation by the unit referred to in subparagraph 1.

4. In the case referred to in paragraph 1(2), the operator shall conclude with the operator of the electricity transmission system directly connected to the system an agreement setting out in particular the terms of:

- 1) providing information to confirm the existence of a foreign physical unit and its technical parameters;
- 2) providing data that allow for the verification and settlement of the performance of the capacity obligation by capacity market units consisting of foreign physical units;
- 3) announcing and carrying out a test stress period in relation to capacity market units consisting of foreign physical units.

5. The solutions set out in paragraph 2(1) shall apply subject to the conclusion by the operator with the transmission system operator relevant for the given zone of the agreement referred to in paragraph 4; in the case of the zone referred to in paragraph 6(1), subject to the conclusion of agreements with all relevant operators of the electricity systems directly connected to the system.

6. The zones in which foreign physical units involved in the capacity market are located and with which interconnector physical units directly connect the system include:

- 1) synchronous profile zone covering:
 - a) part of the transmission system of the Federal Republic of Germany making up a scheduling area directly connected to the system within the meaning of Article 3 point 91 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ L 220 of 25.8.2017, p. 1);
 - b) transmission system of the Czech Republic;
 - c) transmission system of the Slovak Republic;
- 2) Lithuania – covering the transmission system the Republic of Lithuania;
- 3) Sweden – covering the transmission system the Kingdom of Sweden.

Article 7. 1. The operator shall prepare information on forecast maximum volumes of the capacity obligations for each of the zones specified in Article 6(6) on the basis of a medium-term assessment of the sufficiency of electricity generation prepared by the

ENTSO on a cyclical basis, as referred to in Article 4 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/20033 (OJ L 211 of 14.8.2009, p. 15, as amended²).

2. Based on the parameter referred to in Article 32(1)(7):

- 1) the maximum volume of the capacity bid shall be determined with respect to a capacity market unit consisting of interconnector physical units – in the case of the solution specified in Article 6(1)(1); or
- 2) bids shall be selected at the preliminary auction referred to in Article 9(4) – in the case of the solution specified in Article 6(1)(2).

Article 8. 1. In order to allow foreign capacities to participate in the capacity market in the manner specified in Article 6(1)(1), the operator shall agree with the relevant operator of the transmission system directly connected to the system on the volume of the capacity offered in the capacity auction by the capacity market unit consisting of interconnector physical units as the lesser of:

- 1) the parameter referred to in Article 32(1)(7);
- 2) the volume determined by the relevant operator of the transmission system directly connected to the system.

2. In the case of the zone referred to in Article 6(6)(1), where the sum of the volumes of capacity determined in accordance with paragraph 1 by the operators of individual transmission systems covered by the zone referred to in Article 6(6)(1) is greater than the parameter referred to in Article 32(1)(7), the volumes agreed for the individual systems shall be calculated by their *pro rata* reduction so that their total volume corresponds to the parameter.

Article 9. 1. Upon establishment of a financial security for the benefit of the operator, the preliminary auction participant shall submit a bid for the capacity obligation in the capacity market.

2. The bid referred to in paragraph 1 shall specify:

- 1) the price in PLN per 1 MW;
- 2) the amount of the offered capacity in MW – not less than 2 MW;
- 3) unit carbon dioxide emission factor;

² Amendments to the regulation were announced in the EU Official Journal L 115 of 25.4.2013, page 39 and in EU Official Journal L 163 of 15.6.2013, page 1.

4) whether the preliminary auction participant agrees to the acceptance of the bid in relation to part of the offered capacity.

3. A bidder may, in the course of a single preliminary auction, submit more than one bid, provided that the total volume of the capacity offered by him in the bids submitted may not exceed the maximum volume resulting from the established security. Where the value of the bids submitted by the bidder exceeds the value resulting from the established security, valid bids submitted by that bidder shall be selected in accordance with paragraphs 4 and 5.

4. Upon the expiry of the deadline for the submission of bids, the bids shall be arranged in an ascending order and, in the case of bids for the same price, from the bid with the lowest unit carbon dioxide emission factor and then, starting from the cheapest bid, the bids whose total volume of capacity does not exceed the parameter referred to in Article 32(1)(7) shall be accepted.

5. If the last bid which, if selected together with the bids referred to in paragraph 4, is likely to cause the total volume of capacity to exceed the parameter referred to in Article 32(1)(7), and the bid:

- 1) divisible – the bid shall be accepted in the part corresponding to the difference between the size of the parameter referred to in Article 32(1)(7) and the sum of the capacities offered in the other selected bids;
- 2) indivisible – the bid shall be rejected.

6. In the case referred to in paragraph 5(2) a subsequent bid shall be considered in accordance with paragraph 4, provided that if the bid is also indivisible, no subsequent bids shall be considered.

7. The preliminary auction shall end upon entry of the selected bids in the capacity market register. A relevant entry in the capacity market register entitles the preliminary auction participant to submit an application for the issue of a certificate allowing him to participate in the next main auction, additional auctions or in the secondary market, on the terms set out in Article 17(3) and (4).

8. The operator shall, within 7 days after the end of the preliminary auction, notify the preliminary auction participant of the acceptance or rejection of the bid submitted by the participant.

9. The operator shall not publish the preliminary auction results until the capacity auction to which the preliminary auction relates has been completed.

10. The ERO President may require the operator to submit bid prices from the preliminary auction, subject to the provisions on the protection of classified information and other legally protected information.

11. The rights resulting from a bid accepted in the preliminary auction may not be transferred to another person.

Article 10. 1. The operator shall, within 21 days after the end of the preliminary auction, provide the minister competent for energy matters and the ERO President with information regarding the course of the auction. The above information shall include:

- 1) list of the bids and the names of the preliminary auction participants, volumes of the capacities offered in the bids and information about the acceptance of individual bids;
- 2) information about the rejected bids and the reasons for the rejection.

2. The operator shall, within 14 days after the conclusion of the agreement referred to in Article 6(3) or Article 6(4), notify the ERO President thereof.

Chapter 3

General certification

Article 11. The owner of an existing generating physical unit whose gross achievable capacity is equal to or greater than 2 MW is obliged to declare a generating physical unit for general certification purposes.

Article 12. 1. In the general certification the owner of a physical unit or a demand side response unit or an entity authorized by the same shall submit to the operator an application for entry in the register, hereinafter referred to as the “application for registration”.

2. The application for registration shall include:

- 1) details of the physical unit and its owner;
- 2) details of the person authorized to act on behalf of the owner of the physical unit, if appointed, and documents conferring to the same the authority to act on his behalf;
- 3) details of the location of the physical unit;
- 4) technical parameters of the physical unit and the list of metering points;
- 5) in the case of a generating physical unit – a work plan for a period of subsequent 5 calendar years after the year following the year in which the general certification is completed, including the expected period of unavailability of the unit during this period;
- 6) declaration of participation of the physical unit in the next main auction or in one or

more additional auctions and an indication of the quarters or a statement of no intention to participate in the next main auction or additional auctions;

- 7) in the case of a planned generating physical unit – an indication of the delivery year to which the main auction relates and in which the unit is to participate;
- 8) other details specified in the capacity market rules referred to in Article 83.

3. When declaring a physical unit for general certification purposes in the year following the year in which the unit was entered in the register, the applicant may submit an application for registration containing only supplements or modifications to the information provided in the previous general certification.

4. If the details contained in the application for registration of a planned generating physical unit change, the applicant shall provide supplemented or modified details in the next general certification.

5. An application for registration of a planned demand side response unit shall include:

- 1) details referred to in paragraph 2(6) and (8);
- 2) details of the entity which will perform the capacity provider's duties;
- 3) planned total achievable capacity of all demand side response units that will form part of the planned demand side response unit;
- 4) business plan prepared in accordance with the guidelines set out in the capacity market rules referred to in Article 83.

6. An entry of a planned demand side response unit in the relevant register shall entitle the unit to participate in the next certification for the main auction and in the next certification for additional auctions.

7. All details referred to in paragraph 2 in relation to demand side response units forming part of the planned demand side response unit shall be provided before the demand side response test referred to in Article 53(1) is carried out.

Article 13. 1. If an application for registration does not comply with the requirements set out in Article 12(2) or Article 12(5), the operator shall request the applicant to rectify defects or formal defects within the timeframe specified in the capacity market rules referred to in Article 83.

2. If the applicant fails to rectify the defects or formal defects in the application for registration, the operator shall refuse to enter a physical unit in the register and shall forthwith notify the applicant thereof.

Article 14. 1. The operator shall, within 14 days of the end of the general certification, provide the ERO President and the minister competent for energy matters with information regarding the course of the certification process. Such information shall include in particular:

- 1) sum of net achievable capacity of all physical units declared for general certification purposes, broken down into: planned and existing generating physical units, physical demand side response units, planned physical demand side response units, generating physical units that are an electricity storage facility and foreign physical units;
- 2) sum of net achievable capacity of physical units in respect of which participation in the main auction has been declared, broken down into planned and existing physical units, physical demand side response units, generating physical units that are an electricity storage facility and foreign physical units;
- 3) list of entities requested to supplement the application in accordance with Article 13(1);
- 4) list of entities that have been refused an entry in the register in accordance with Article 13(2).

2. The operator shall, within 28 days of the end of the general certification, submit to the ERO President and the minister competent for energy matters the proposed parameter values referred to in Article 31 subparagraphs 1, 2, 4 and 5 and Article 32(1)(2) to (7) and Article 32(3).

Chapter 4

Certification for the main auction and additional auctions

Article 15. 1. In the certification for the main auction or additional auctions the owner of a physical unit, a foreign physical unit, a planned demand side response unit or an entity authorized by the owner to dispose of such unit in the capacity market shall submit to the operator an application for:

- 1) creation and admission of a capacity market unit to the main auction or additional auctions or to participate in secondary trading; or
 - 2) admission to additional auctions of a capacity market unit created in the certification for the main auction for the same delivery year,
- hereinafter referred to as the “application for certification”.

2. An application for certification may concern physical units, foreign physical units or planned demand side response units entered in the register, with an entry valid at the start of the certification for the main auction or additional auctions.

3. A capacity provider may not submit an application for certification for the main auction relating to a capacity market unit in respect of which it has already entered into a multi-year capacity agreement covering the delivery period to which the certification relates.

4. A capacity market unit covered by the capacity obligation for a relevant delivery year or a physical unit forming part of such capacity market unit may not be declared for the purposes of certification for additional auctions concerning the same year.

5. The capacity market unit consisting of physical units generating annually more than 30% of electricity in high efficiency cogeneration may take part both in the main auction and the additional auction held for the same delivery year, provided that the sum of the capacity obligations offered by such unit may not be greater than the product of net achievable capacity and the availability correction co-efficient of the unit.

Article 16. 1. The capacity provider may submit an application for creation of a capacity market unit consisting of:

- 1) a generating physical unit of the net achievable capacity not less than 2 MW;
- 2) a physical demand side response unit of the achievable demand side response capacity not less than 2 MW;
- 3) a group of generating physical units whose total net achievable capacity is not less than 2 MW and not greater than 50 MW, with the net achievable capacity of a single physical unit comprised in the group of such units being not greater than 10 MW;
- 4) a group of physical demand side response units whose total achievable demand side response capacity is not less than 2 MW and not greater than 50 MW;
- 5) a single foreign generating physical unit of the net achievable capacity not less than 2 MW;
- 6) a single foreign demand side response unit of the achievable demand side response capacity not less than 2 MW;
- 7) a group of foreign generating physical units whose total net achievable capacity is not less than 2 MW and not greater than 50 MW, with the net achievable capacity of a single physical unit comprised in the group of such units being not greater than 10 MW;
- 8) a group of foreign physical demand side response units whose total achievable demand side response capacity is not less than 2 MW and not greater than 50 MW;
- 9) a single demand side response unit of the achievable demand side response capacity

not less than 2 MW;

- 10) a group of planned demand side response units whose total achievable demand side response capacity is not less than 2 MW and not greater than 50 MW;
- 11) a group consisting of at least one physical demand side response and at least one planned demand side response whose total achievable demand side response capacity is not less than 2 MW and not greater than 50 MW.

2. A capacity market unit for a relevant delivery year may not comprise a physical unit:

- 1) in respect of which the entity generating electricity from renewable energy sources will, in a given delivery year, be entitled to cover the negative balance referred to in Article 93(2)(3) of the Renewable Energy Sources Act of 20 February 2015, other than:
 - a) a multi-fuel firing plant within the meaning of Article 2 subparagraph 15 of the Renewable Energy Sources Act of 20 February 2015, or
 - b) a hybrid system within the meaning of Article 2 subparagraph 34 of the Renewable Energy Sources Act of 20 February 2015;
- 2) in respect of which the entity generating electricity from renewable energy sources, for a given delivery period, will apply for the issue of certificates of origin within the meaning of the act referred to in subparagraph 1, other than:
 - a) a multi-fuel firing plant within the meaning of Article 2 subparagraph 15 of the Act referred to in subparagraph 1; or
 - b) a hybrid system within the meaning of Article 2 subparagraph 34 of the act referred to in subparagraph 1;
- 3) in respect of which the electricity generator or consumer will, in a given year, provide to the operator the service referred to in the instructions referred to in Article 9g of the Energy Law of 10 April 1997, where the nature of performance and remuneration is similar to the capacity obligation;
- 4) a foreign physical unit in respect of which the capacity provider will, during the delivery year, provide to the operator of an electricity system in an EU member state a service similar to the capacity obligation;
- 5) a foreign physical unit in respect of which the capacity provider will, during the delivery year, use the appropriate support system for generating energy from renewable sources or high efficiency cogeneration.

3. The ERO President shall announce in the Public Information Bulletin, on its website, a list of the services referred to in paragraph 2(3) and shall promptly update it in the event of a change in the instructions referred to in Article 9g of the Energy Law of 10 April 1997 applicable to such services.

4. In the course of the certification for the capacity auction the operator shall create capacity market units consisting of physical interconnector units and shall enter them in the register.

Article 17. 1. A capacity market unit may only be disposed of by a single capacity provider in a given calendar year.

2. A physical unit may only form part of a single capacity market unit in a given calendar year.

3. A preliminary auction participant which, as a result of the preliminary auction relevant for a given capacity auction, has been entered in the capacity market register, may apply for creation of a capacity market unit consisting of one or more foreign physical units in the place of each accepted bid.

4. The total volume of the capacity obligation that the preliminary auction participant intends to offer shall be no less than 2 MW and no greater than the volume resulting from the accepted bid and no greater than the sum of the products of achievable capacities of individual foreign physical units and relevant availability correction co-efficient.

5. Only the operator of the electricity transmission system to which a capacity market unit consisting of interconnector physical units is connected may be a capacity provider with respect to such capacity market unit.

Article 18. 1. The maximum volume of the capacity obligation that a capacity market unit may offer in an application for certification in the capacity market shall be calculated taking into account the availability correction co-efficient determined for different technology groups, hereinafter referred to as the “availability correction co-efficient”.

2. The availability correction co-efficient shall be determined annually on the basis of historical data for the last 5 years regarding capacity delivery characteristics, unreliability and net achievable capacity losses typical of the given technology groups.

3. The availability correction co-efficient for different technology groups shall be determined within a range from 0 to 1.

4. If a capacity market unit consists of a group of physical units belonging to

different capacity delivery technology groups, the availability correction co-efficient for the capacity market unit shall be equal to the lowest of the factors for physical units comprised in it.

Article 19. 1. An application for certification of a generating capacity market unit shall include:

- 1) the volume of the capacity obligation to be offered by the capacity provider for this unit in the capacity auction, not greater than the product of the net achievable capacity of the unit and the availability correction co-efficient;
- 2) a certificate issued by the operator or the distribution system operator competent for the location confirming compliance with the technical requirements set out in the capacity market rules referred to in Article 83, necessary for correct settlements, by all measuring systems of physical units forming part of the capacity market unit;
- 3) copies of electricity generation licenses granted to physical units forming part of a capacity market unit, if required in accordance with the Energy Law of 10 April 1997, or copies of promises of licenses;
- 4) net achievable capacity of each physical unit during the delivery period;
- 5) information confirming the ability of individual physical units forming part of a capacity market unit to provide net achievable capacity during the delivery period for a continuous period not shorter than 4 hours, including information about the technology used and the method of ensuring the availability of fuel in quantities sufficient for the performance of the capacity obligation;
- 6) information containing:
 - a) the rate of changes in the volumes of electricity generated by physical units forming part of a capacity market unit;
 - b) characteristics of the net electricity generation efficiency, and in the case of cogeneration units referred to in Article 3 subparagraph 35 of the Energy Law of 10 April 1997, also the characteristics of the efficiency of generating net electricity and heat and net general efficiency understood as the ratio of net electricity and heat generation to fuel chemical energy consumption in a cogeneration unit;
 - c) technical minimum for electricity generation at which a physical generating unit may operate for a continuous period not shorter than 4 hours, without any

prejudice to the sustainability of the unit, expressed in relation to net achievable capacity;

- d) unit emission factors for: carbon dioxide, sulphur, nitrogen oxides and dust;
- e) in respect of the calendar year preceding the year in which the certification for capacity auction is carried out, data relating to fixed and variable operating costs and capital costs incurred by physical units forming part of the capacity market unit, including:
 - unit variable costs, other than basic fuel and emission allowances costs;
 - fixed operating costs;
 - fixed capital costs;
 - investment costs related to the activities on assets comprised in the unit;

- 7) information on existing and planned time restrictions on the operation of a physical unit resulting from separate regulations;
- 8) a statement to the effect that no circumstances referred to in Article 16(2) have occurred.

2 The capacity provider may apply for the creation of a new capacity market unit consisting of a single physical unit which, at the date of the start of the general certification, was a planned physical generating unit. In such case, in addition to the information referred to in paragraph 1, an application for certification shall include:

- 1) planned or incurred financial expenditure and material scope of work related thereto;
- 2) if the conclusion of a capacity agreement for a term longer than one delivery year is sought – an independent expert opinion confirming:
 - a) financial expenditure referred to in subparagraph 1, and
 - b) planned compliance by a physical unit forming part of a new generating capacity market unit with the emission requirements set out in Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17, as amended³) or with Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1), respectively;

³ Amendments to the directive were announced in the OJ L 158, 19.6.2012, p. 25.

- c) if the conclusion of the agreement is sought in accordance with Article 25(5) – planned compliance by a physical unit forming part of a new generating capacity market unit with the parameter referred to in Article 25(5)(1) or (2), respectively;
- 3) a certified true copy of:
- a) a grid connection agreement or grid connection requirements if such agreement has not been concluded;
 - b) a final and non-appealable construction permit issued for a physical unit if it is required by construction law and has been issued;
 - c) a final and non-appealable decision on environmental constraints to consent for the project implementation under the Act of 3 October 2008 on the provision of information about environment and its protection, participation of the public in the environmental protection and assessments of the environmental impact (Journal of Laws of 2017, item 1405, 1566 and 1999), if it is required and has been issued;
- 4) information confirming the possibility of obtaining financing;
- 5) works and payment schedule for the investment;
- 6) information specifying the term for which the capacity provider intends to conclude a capacity agreement, subject to Article 25(4) and (5).

3 The capacity provider may apply for the creation of a modernized capacity market unit consisting of a single existing generating physical unit. In such case, in addition to the information referred to in paragraph 1, an application for certification shall include:

- 1) planned or incurred financial expenditure and material scope of work related thereto;
- 2) net achievable capacity during the delivery period in the event of modernization opt-out;
- 3) volume of the capacity obligation to be offered at the capacity auction in the event of modernization opt-out, not greater than:
 - a) volume of the capacity obligation offered in the case of modernization;
 - b) product of the availability correction co-efficient and the capacity referred to in paragraph 2;
- 4) if the conclusion of a capacity agreement for a term longer than one delivery year is sought – an independent expert opinion confirming:
 - a) financial expenditure referred to in subparagraph 1, and
 - b) planned compliance by a physical unit forming part of a modernized generating capacity market unit with the emission requirements set out in the directive

referred to in paragraph 2(2)(b);

- c) if the conclusion of the agreement is sought in accordance with Article 25(5) – planned compliance by a physical unit forming part of a modernized generating capacity market unit with the parameter referred to in Article 25(5)(1) or (2), respectively;
- 5) information confirming the possibility of obtaining financing for the modernization;
- 6) works and payment schedule for the investment;
- 7) information about a change in technical and economic parameters following the modernization;
- 8) information specifying the term of a capacity agreement, subject to Article 25(4) and (5), which the capacity provider intends to conclude as a result of the capacity auction relating to that unit.

4 The capacity provider applying for the creation of a capacity market unit consisting of one or more foreign physical units shall:

- 1) provide the information referred to in paragraph 1(1) and (4) to (8);
- 2) in the case of certification for additional auctions – specify the quarters of the delivery period in respect of which it intends to participate in additional auctions;
- 3) submit a confirmation issued by the transmission system operator competent for the location of a foreign physical unit stating compliance with the actual situation of the technical parameters and location of all foreign physical units comprised in a given capacity market unit;
- 4) submit the commitment of the transmission system operator competent for the location of a foreign physical unit to provide the operator with metering and settlement data and data regarding electricity generation or electricity consumption reduction bids submitted by a foreign physical unit, enabling verification and settlement of the performance of the capacity obligation, on the terms and in the manner specified in the capacity market rules referred to in Article 83.

Article 20 1. An application for certification of a demand side response capacity market unit shall contain the information referred to in Article 19(1) respectively for the demand side response capacity market unit, including information about resources or systems allowing for demand reduction including information about electricity generation sources or electricity storage facilities if they form part of the demand side response capacity market unit.

2. If a demand side response capacity market unit comprises a planned demand side response unit, the confirmation referred to in Article 19(1)(2) shall not be required with regard to that capacity market unit.

3. Where the capacity provider applies for certification of a demand side response capacity market unit as proven, an application for certification shall also include confirmation of completion of a demand side response test.

4. Where the capacity provider applies for the conclusion of a capacity agreement for a demand side response capacity market unit for a term longer than one delivery period in the main auction, an application for certification for that unit shall, in addition to the information required under paragraph 1, include:

- 1) planned or incurred financial expenditure and material scope of work related thereto;
- 2) an independent expert opinion confirming:
 - a) financial expenditure referred to in subparagraph 1, and
 - b) if the capacity market unit comprises at least one generating source – technical parameters of all generating sources comprised in demand side response physical units forming part of a given demand side response capacity market unit and its planned compliance with the emission requirements, in accordance with the directives referred to in Article 19(2)(2)(b).

5. An application for certification of a demand side response capacity market unit consisting of a foreign demand side response physical unit shall contain the information referred to in Article 19(4), respectively for the demand side response capacity market unit, including information about resources or systems allowing for demand reduction including information about electricity generation sources or electricity storage facilities if they form part of the demand side response capacity market unit.

6. Where the capacity provider applies for certification of a demand side response capacity market unit consisting of a foreign demand side response physical unit, an application for certification shall also include confirmation of completion of a demand side response test.

Article 21. When submitting, in the certification for the main auction or additional auctions, an application for the creation of a previously certified capacity market unit, the capacity provider may submit an application for certification containing only an addition or modification to the information provided in the previous certification for the main auction or additional auctions.

Article 22. 1. Where an application for certification does not comply with the requirements set out in Article 15, Article 16(1) or (2), Article 19 or Article 20 or in the capacity market rules referred to in Article 83, the operator shall request the applicant to rectify defects or formal defects in the manner and within the time limit set out in such rules.

2. If the defects or formal defects in the application for certification are not rectified within the specified time limit, the operator shall refuse to issue a certificate, whereof it shall notify the applicant forthwith.

Article 23. The operator shall, on the basis of an application for certification, issue a certificate confirming the establishment of a capacity market unit if the owner of the physical unit or an entity authorized by the same applied for the creation thereof, and allowing the capacity market unit to participate in:

- 1) the main auction or one or more additional auctions which immediately follow the certification provided that in the general certification all physical units comprised in that capacity market unit have been notified for the purposes of participating in the auction;
- 2) the secondary market in relation to the delivery period to which the certification relates.

Article 24. 1. A certificate issued for a capacity market unit shall, as a minimum, specify:

- 1) details of the capacity provider and the capacity market unit;
- 2) qualification of the capacity market unit in accordance with Article 25(1);
- 3) delivery period to which the certificate relates;
- 4) the capacity auction in which the participation is allowed on the basis of the certificate;
- 5) the volume of the capacity obligation that will be offered at the capacity auction to which the certification relates;
- 6) in the case of a modernized capacity – the volume of the capacity obligation that will be offered at the capacity auction in the event of modernization opt-out;
- 7) the net achievable capacity and the availability correction co-efficient;
- 8) information about the status of the capacity market unit as a price-maker or a price-taker;
- 9) the number of the delivery periods for which the capacity provider intends to conclude a capacity agreement as a result of the main auction – in the case of a new or

modernized generating capacity market unit or a demand side response capacity market unit referred to in Article 20(4).

2. If the capacity provider has not concluded a capacity agreement as a result of the main auction:

- 1) a certificate issued for the unit shall expire on the date of the announcement of the final results of the capacity auction – in relation to a new generating capacity market unit;
- 2) a unit shall become an existing capacity market unit and its achievable capacity shall be equal to the volume specified in paragraph 1(6) – in relation to a modernized generating capacity market unit;
- 3) a certificate issued for a capacity market unit other than that specified in subparagraphs 1 and 2 may be de-activated by the operator after completion of the capacity auction if the capacity provider so requests.

Article 25. 1. When issuing a certificate for a generating capacity market unit in a certification for the main auction, the operator shall qualify such unit as:

- 1) an existing generating capacity market unit;
- 2) a new generating capacity market unit – if it consists of a single planned generating physical unit;
- 3) a modernized generating capacity market unit – if in an application for certification the capacity provider has demonstrated that the physical generating unit meets the parameter referred to in Article 32(1)(4)(b).

2. When issuing a certificate for a generating capacity market unit in a certification for additional auctions the operator shall qualify the same as an existing generating capacity market unit.

3. When issuing a certificate for a demand side response capacity market unit in a certification for the main auction or additional auctions, the operator shall qualify such unit as:

- 1) a proven demand side response capacity market unit – if the application for certification is accompanied by the confirmation of completion of a demand side response test referred to in Article 53(1);
- 2) an unproven demand side response capacity market unit – if the application for certification is not accompanied by the confirmation of completion of a demand side response test referred to in Article 53(1).

4. The certificate shall entitle the capacity provider to offer the capacity obligation as follows:

- 1) in respect of a new generating capacity market unit meeting the parameter referred to in Article 32(1)(4)(a) – for not more than fifteen subsequent delivery periods;
- 2) in respect of a new generating capacity market unit, a modernized generating capacity market unit or a demand side response capacity market unit referred to in Article 20(4) meeting the parameter referred to in Article 32(1)(4)(b) – for not more than five subsequent delivery periods;
- 3) in respect of an existing generating capacity market unit, a demand side response capacity market unit other than that specified in subparagraph 2, a new generating capacity market unit other than that specified in subparagraphs 1 and 2, a capacity market unit consisting of foreign physical units or a capacity market unit consisting of physical interconnector units – for one delivery period, in the course of the main auction;
- 4) in respect of an existing generating capacity market unit, a demand side response capacity market unit, a new generating capacity market unit, a capacity market unit consisting of foreign physical units or a capacity market unit consisting of physical interconnector units – for one delivery period, in the course of the additional auction.

5. The capacity provider shall have the right to conclude a capacity agreement for a delivery period which is longer by two years than the maximum period referred to in paragraph 4 subparagraphs 1 or 2 if the capacity market unit referred to in paragraph 4 subparagraphs 1 or 2, which is a generating capacity market unit:

- 1) meets the unit carbon dioxide emission factor which is less than or equal to 450 kg per 1 MW of energy generated and
- 2) in respect of cogeneration units – provides at least one half of the heat generated in the unit to the heating system in which hot water serves as the carrying agent.

6. A capacity market unit in the main auction shall enjoy:

- 1) the status of a price-maker – in the case of:
 - a) a new or modernized generating capacity market unit,
 - b) a demand side response capacity market unit or a capacity market unit consisting of a foreign physical demand side response unit,

- c) a capacity market unit consisting of a foreign physical unit,
 - d) a physical interconnector unit;
- 2) the status of a price-taker – in the case of an existing generating capacity market unit.

7. A capacity market unit in an additional auction shall enjoy the status:

- 1) of a price-maker – in the case of:
 - a) a demand side response capacity market unit,
 - b) a capacity market unit consisting of a foreign physical unit,
 - c) a physical interconnector unit;
- 2) of a price-taker – in the case of an existing generating capacity market unit.

Article 26. 1. The operator shall issue a conditional certificate with respect to a new generating capacity market unit and to an unproven demand side response capacity market unit.

2. A conditional certificate shall entitle the capacity provider to participate in the capacity auction upon establishment for the benefit of the operator of the financial security referred to in Article 50. If the capacity provider fails to establish financial security within the time limit specified in the provisions issued under Article 51, he shall lose the right to participate in the capacity auction with the capacity market unit to which the conditional certificate relates.

3. In respect of the obligation to provide the security, the provision of the first sentence of paragraph 2 shall not apply where such security has already been established for the purposes of prior auctions and the certificate authorizing participation in the main auction or additional auctions issued for the demand side response capacity market unit remains in effect.

Article 27. The operator shall, within 10 days after the end of the certification for the main auction, provide the ERO President and the minister competent for energy matters with information about the course of the certification. Such information shall include in particular:

- 1) the number of capacity market units created and the sum of the products of their net achievable capacity and the availability correction co-efficient, broken down into: existing and modernized and new generating capacity market units, demand side response capacity market units, generating capacity market units being an electricity storage facility, capacity market units consisting foreign physical units and capacity market units consisting of physical interconnector units;

- 2) a list of physical units that, despite being declared for the purposes of participation in the main auction during the general certification, have not participated in the certification for the main auction;
- 3) the total volume of capacity obligations that capacity providers will offer in the main auction, broken down into price-makers and price-takers;
- 4) a list of capacity market units comprising physical units with existing or planned time restrictions on operation under separate regulations and the type of such restrictions;
- 5) a list of entities requested to supplement the application in accordance with Article 22(1);
- 6) a list of entities that have been refused a certificate in accordance with Article 22(2);
- 7) the sum of the products of the net achievable capacity of capacity market units for which a certificate of eligibility to participate only in the secondary market has been issued, and their availability correction co-efficient.

Article 28. The operator shall, within 10 days after the end of the certification for additional auctions, provide the ERO President and the minister competent for energy matters with information about the course of the certification. Such information shall include in particular:

- 1) the number of capacity market units that have been created and allowed to participate in the additional auctions and the sum of the products of their net achievable capacity and availability correction co-efficient;
- 2) the total volume of capacity obligations that capacity providers will offer in the additional auctions, broken down into price-makers and price-takers;
- 3) a list of entities requested to supplement the application in accordance with Article 22(1);
- 4) a list of entities that have been refused a certificate in accordance with Article 22(2).

Chapter 5

Capacity auctions

Article 29. 1. Capacity auctions in which capacity providers offer a capacity obligation shall be held in the capacity market.

2. By 1 March of each year the operator shall announce the date of:

- 1) the main auction – falling in the period between 1 and 22 December of the year in

which the auction is announced;

- 2) additional auctions – falling in the first quarter of the year following the year in which the auction is announced.

3. The main auction shall be held in the fifth year preceding the delivery period, as per the following timetable:

- 1) in 2019 – the delivery period falling in 2024;
- 2) in 2020 – the delivery period falling in 2025;
- 3) in 2021 – the delivery period falling in 2026;
- 4) in 2022 – the delivery period falling in 2027;
- 5) in 2023 – the delivery period falling in 2028;
- 6) in 2024 – the delivery period falling in 2029;
- 7) in 2025 – the delivery period falling in 2030;

except for 2018 in which the main auctions for delivery periods falling in 2021-2023 shall be held.

4. Additional auctions shall be held in the year preceding the year in which delivery periods of each of these auctions fall, save that additional auctions for all delivery periods shall be held at the same time.

Article 30. 1. A capacity auction shall be held as a series of rounds on a descending clock basis. The auction begins at the maximum price which shall be decreased in each subsequent round.

2. In the capacity auction round the capacity provider offers a capacity obligation specified in the certificate in respect of a relevant capacity market unit at a price equal to:

- 1) the price specified in an exit bid if the capacity provider submits it in the current or previous round, or
- 2) the subsequent round floor price unless the capacity provider submits an exit bid and the relevant round is the last capacity auction round, or
- 3) the minimum price referred to in Article 31 subparagraph 5 unless the capacity provider submits an exit bid and the relevant round is the last capacity auction round.

3. In the capacity auction, the capacity provider may not submit more than one exit bid with respect to a capacity market unit.

4. With respect of capacity market units comprising:

- 1) foreign physical units, an exit bid shall be deemed to be submitted at a price equal to the price specified in the bid accepted in the preliminary auction on the basis of which

the capacity market unit has been certified;

- 2) physical interconnector units, an exit bid shall be deemed to be submitted on the terms set out in the agreement referred to in Article 6(3).

5. With respect to a capacity market unit enjoying the status:

- 1) of a price-taker, the capacity provider may submit exit bids at a price which is lower than or equal to the maximum price specified for price-takers;
- 2) of a price-maker, the capacity provider may submit exit bids at a price which is not higher than the capacity auction maximum price.

6. The price specified in the exit bid submitted in the relevant round:

- 1) may not be higher than the floor price of the current round, but must be higher than the floor price of the subsequent round;
- 2) may not be higher than the maximum price specified for the price-taker referred to in Article 32(1)(2) if the bid applies to a capacity market unit enjoying the status of a price-taker;
- 3) must be higher than the minimum price referred to in Article 31 subparagraph 5 if the relevant round is the last capacity auction round.

7. The capacity provider who offers in the main auction a capacity obligation for more than one delivery period may on one occasion shorten the duration of the capacity obligation offered in respect of the relevant capacity market unit to one delivery period by offering the minimum price of the multi-year capacity obligation in any round, except that the price cannot be higher than the floor price of the current round and must be higher than the floor price of the subsequent round. The duration of the capacity obligation is shortened where the obligation is covered by a capacity agreement concluded at a price lower than the minimum price of the multi-year capacity obligation.

8. Prior to the start of each round the operator shall provide the auction participants and members of the public with information which includes as a minimum:

- 1) the floor price of the current and the subsequent round;
- 2) the approximate total volume of the capacity obligations offered by capacity providers at a price not higher than the floor price of the current round.

9. The capacity provider who offers in the main auction a capacity obligation with respect to a modernized generating capacity market unit and who has not submitted an exit bid for that unit may, on one occasion in any round, give a notice of intention to opt out of

modernization while specifying the price below which he will not execute modernization (minimum modernization price), save that such price cannot be higher than the floor price of the current round and must be higher than the floor price of the subsequent round.

10. If the capacity provider gives the notice referred to in paragraph 9, a capacity agreement may be concluded in respect of the modernized unit only at a price not less than the minimum modernization price. If the auction price drops below the minimum modernization price, the unit shall be converted from a modernized generating capacity market unit to an existing generating capacity market unit enjoying the status of a price-taker, in respect of which the capacity obligation referred to in Article 24(1)(6) is offered. In such case, the duration of the capacity obligation shall be shortened to one delivery period.

Article 31. A demand in the capacity auction shall be determined on the basis of:

- 1) the demand for power determined in accordance with Article 33;
- 2) the market entry price of a new generating unit reflecting the alternative cost of power generation by the operator by constructing a generating unit at the lowest operating and capital fixed costs, taking into account the potential margin on the sale of electricity and the provision of system services referred to in Article 9c(2)(8) of the Energy Law of 10 April 1997;
- 3) the factor increasing the price referred to in subparagraph 2, used to determine the maximum price applicable in the auction;
- 4) the parameter determining the volume of capacity below the demand referred to in subparagraph 1 for which the price reaches the maximum value referred to in subparagraph 3;
- 5) the parameter determining the volume of capacity above the demand referred to in subparagraph 1 for which the price reaches the minimum value of 0.01 PLN/kW/month.

Article 32. 1. Main auction parameters shall include:

- 1) the volumes determining the demand in the auction referred to in Article 31;
- 2) the maximum price specified for the price-taker, determined on the basis of capital and operating fixed costs;
- 3) the maximum number of auction rounds;
- 4) unit levels of investment costs compared to the net achievable capacity governing the qualification of a capacity market unit as:

- a) a new generating capacity market unit – eligible to offer capacity obligations for not more than 15 delivery periods in the main auction,
 - b) a new generating capacity market unit, a modernized generating capacity market unit or a demand side response capacity market unit – eligible to offer capacity obligations for not more than 5 delivery periods in the main auction;
- 5) minimum volumes of capacity obligations expected to be acquired as a result of additional auctions for individual quarters of the delivery year to which the main auction relates;
 - 6) availability correction co-efficient for individual technology groups;
 - 7) maximum volumes of capacity obligations for the zones referred to in Article 6(6).

2. The unit levels of investment costs referred to in paragraph 1(4), incurred or to be incurred in the period between January of the fifth year preceding the delivery year and the delivery year shall apply:

- 1) in the case of a modernized capacity market unit – to financial costs for the construction of new technological systems or in respect of activities on the existing technology systems for the purposes of that unit;
- 2) in the case of a new capacity market unit – to financial costs per physical generating unit forming a capacity market unit;
- 3) in the case of a demand side response unit – to financial costs for adjusting the devices to the ability to provide demand side response services, to the construction of an electricity storage facility or an electricity generation internal source, which will form part of the devices of the final consumer purchasing electricity.

3. Additional auction parameters shall also include the parameters referred to in paragraph 1(1) to (3) and (7), determined respectively for the delivery quarters and the parameters referred to in paragraph 1(6) determined for the main auction relating to the same delivery year.

Article 33. The demand for power in a capacity auction shall be determined on the basis of:

- 1) forecast demand for power in the system in a given delivery period;
- 2) the required level of capacity reserves beyond the demand in the given delivery period, set on the basis of the adopted standard of security of electricity supply to final customers specified in the regulations issued under Article 68, construed as the loss of load expressed in hours per year;

- 3) capacity volumes:
 - a) provided by physical units not included in capacity market units,
 - b) resulting from the existing capacity agreement which have as their object capacity obligations for the same delivery period,
 - c) in the case of the main auction – planned to be acquired as a result of additional auctions,
 - d) of interconnectors taking into account the possibility of using them for the purpose of meeting the demand for power in the system and the results of the preliminary auctions.

Article 34. 1. The minister competent for energy matters shall, after consulting the ERO President, determine by way of a regulation the parameters of the next preliminary auction, the parameters of the next main auction and the next additional auctions referred to in Article 32(1) and (3), taking into account the national energy policy, adequacy of the parameters used for the system purposes, the need to ensure system security, equal and non-discriminatory treatment of capacity providers and taking into account the anticipated availability of transmission capacities and their participation in ensuring the security of electricity supply.

2. The minister competent for energy matters shall issue the regulation referred to in paragraph 1 not later than 18 weeks before the start of each main auction.

Article 35. 1. In the event of failure of a dedicated ICT system, by means of which the auction is or is to be carried out:

- 1) the ERO President may, at the operator's request, order the start of the capacity auction to be withheld;
- 2) the operator may suspend, for not more than 24 hours, the start of the capacity auction or withhold the capacity auction that has already started, and shall promptly notify the ERO President and the minister competent for energy matters thereof and specify the reasons for withholding or suspending the auction.

2. The ERO President shall, as soon as the reasons for withholding the capacity auction cease to exist, announce, by way of an order, a new date of commencement of the withheld capacity auction.

3. The operator shall resume the suspended capacity auction promptly upon cessation of the reasons for the suspension.

4. The order referred to in paragraph 1(1) and paragraph 2 may not be appealed.

Article 36. 1. A capacity auction shall end upon the end of:

- 1) the round in which the total amount of capacity obligations for which no exit bids have been submitted, including the submitted opt-out modernization statements, is not greater than the demand for capacity or
- 2) the last round.

2. The operator shall specify capacity market units in respect of which capacity agreements will be concluded as a result of the capacity auction, taking into account:

- 1) specified demand for power;
- 2) submitted exit bids and opt-out modernization statements;
- 3) indivisible nature of capacity obligations offered in the auction.

3. Due to the indivisibility requirement referred to in paragraph 2(3), on the basis of the cost-benefit analysis prepared in the manner specified in the capacity market rules referred to in Article 83, the total amount of the capacity obligations for which capacity agreements are concluded may be less or greater than the determined demand for power in the final round.

4. Where the capacity auction has ended in the manner referred to in paragraph 1(1), the highest price at which the capacity obligation has been offered with respect to the capacity market units referred to in paragraph 2.2 shall be the closing price of the capacity auction.

5. Where the capacity auction has ended in the manner referred to in paragraph 1(2) and the total amount of the capacity obligations offered by the capacity providers is greater than the demand for power, the price referred to in Article 31(5) shall be deemed the capacity auction closing price and capacity agreements shall be concluded with respect to all capacity market units for which the capacity providers have not submitted exit bids, including the submitted opt-out modernization statements.

6. For the purposes of establishing a list of capacity market units to be covered by capacity agreements as a result of the capacity auction, in the case of units for which exit bids with the same price have been submitted, the bids shall be ranked first according to the consecutive lowest unit carbon dioxide emission factors and then according to the time of submission of the exit bids.

7. Upon completion of the capacity auction as a result of which capacity market units consisting of foreign physical units are subject to a capacity obligation, the highest price in the exit bid regarding the capacity market unit subject to a capacity obligation located in a given zone shall be the price of the capacity obligations for all such units in the individual

zones referred to in Article 6(6).

Article 37. A physical unit forming part of a capacity market unit that, despite taking part in the main auction and additional auctions for the same delivery year, is not subject to a capacity obligation, may be decommissioned after one year after the decommissioning notification has been made for that unit, on the terms agreed with the operator of the electricity system to which the unit is connected.

Article 38. 1. The operator shall, within 3 working days after the end of the capacity auction, enter on the register and make public the preliminary results of the auction containing:

- 1) a list of the capacity market units for which capacity agreements have been concluded, including the names of the capacity providers;
- 2) information about the amount of the capacity obligations under the concluded capacity agreements and the duration of such agreements;
- 3) the capacity auction closing price.

2. The operator shall provide the minister competent for energy matters and the ERO President with information about the course of the auction within 7 calendar days after the capacity auction has ended.

Article 39. 1. If the capacity auction has been carried out in violation of the provisions of the Act or the auction terms or the participant's conduct is inconsistent with the law or the capacity market rules referred to in Article 83:

- 1) if this had a significant impact on the auction results – the ERO President shall decide to annul the capacity auction,
- 2) the minister competent for energy matters or the ERO President may decide to annul the capacity auction,

within 14 days after the capacity auction has ended.

2. If the performance of the capacity agreements concluded as a result of the auction jeopardizes the security of electricity supply, the minister competent for energy matters may, within 21 days after the capacity auction has ended, decide to annul the capacity auction.

3. The ERO President shall announce the final results of the capacity auction in the Public Information Bulletin on its website, on the first working day following the 21st day after the capacity auction has ended.

4. If the capacity auction is annulled for reasons specified in paragraphs 1 or 2, the minister competent for energy matters shall announce the date of a new capacity auction within 14 days after the decision to annul the auction is issued. Certificates issued prior to the annulled capacity auction shall remain valid and shall be the basis for being admitted to participation in a new auction.

Article 40. 1. The minister competent for energy matters shall annually prepare a report on the operation of the capacity market in the previous year, containing in particular information on the course of the general certification for the capacity auction, capacity auction results, performance of capacity obligations and the current and anticipated situation in terms of generating capacities.

2. The minister responsible for energy matters shall, by 30 April, submit the report referred to in paragraph 1 to the President of the Office of Competition and Consumer Protection.

3. The President of the Office of Competition and Consumer Protection shall forward the report referred to in paragraph 1 to the European Commission by 31 May of each year.

Chapter 6

Capacity agreement

Article 41. Under a capacity agreement:

- 1) the capacity provider undertakes to perform, for a specified period, a capacity obligation through a specified capacity market unit in accordance with the capacity auction result;
- 2) the operator undertakes to:
 - a) verify the performance of the capacity obligation,
 - b) provide details necessary for the capacity provider to issue accounting documents constituting the basis for paying remuneration for performance of the capacity obligation,
 - c) calculate the amount of penalties payable by the capacity provider for failing to perform the capacity obligation;
- 3) the capacity auction settlement body referred to in Article 61(2) undertakes to pay remuneration for the performance of the capacity obligation.

Article 42. 1. A capacity agreement shall specify as a minimum:

- 1) the capacity market unit through which the capacity provider performs a capacity obligation;
- 2) the duration of the capacity obligation;
- 3) the manner of performance of the capacity obligation and the remuneration for its performance, including the price;
- 4) provisions on:
 - a) payment of the penalties referred to in Article 59,
 - b) retention of the securities referred to in Article 50,
 - c) monitoring the investment progress or modernization of the capacity market unit if the agreement concerns a new or modernized capacity market unit,
 - d) conduct of the demand side response test referred to in Article 53(1) if the agreement concerns an unproven demand side response capacity market unit;
- 5) the terms for its termination;
- 6) liability of the parties for non-performance or improper performance of the agreement.

2. A model capacity agreement is attached to the capacity market rules referred to in Article 83.

Article 43. In the case of a capacity market unit consisting of physical interconnector units, the agreement referred to in Article 6(3) shall, at the time the capacity obligation of this unit arises as a result of the capacity auction, become a capacity agreement referred to in Article 41.

Article 44. 1. A capacity agreement shall be concluded upon announcement of the preliminary results of the auction referred to in Article 38(1), under a condition precedent, until the final auction results are announced.

2. A capacity agreement may also be concluded as a result of a transaction on the secondary market, upon the transaction being entered in the register.

3. A capacity agreement shall be concluded for a specified period.

4. Remuneration for performance of the capacity obligation shall become payable on the date of commencement of the delivery period.

5. If the capacity agreement concerns a new or modernized capacity market unit or the demand side response capacity market unit referred to in Article 20(4), the remuneration for performance of the capacity obligation shall become payable on condition that the capacity provider demonstrates compliance with the requirements referred to in Article 52.

Article 45. A capacity agreement shall be invalid unless made in electronic form.

Article 46. 1. A capacity agreement shall terminate if it concerns:

- 1) a new generating capacity market unit and the capacity provider has failed to comply with the requirements referred to in Article 52(1);
- 2) a new generating capacity market unit and the capacity provider has failed to comply with the requirements referred to in Article 52(1) before the end of the third delivery year or before the end of the term of the capacity agreement, if the same has been concluded for less than three delivery years;
- 3) an unproven demand side response capacity market unit and the capacity provider has failed to obtain the confirmation of completion of a demand side response test referred to in Article 53(1) before the commencement of the delivery period.

2. If the capacity agreement concerns a modernized generating capacity market unit and the capacity provider has failed to perform the obligation referred to in Article 52(1) or (2), the term of the capacity agreement shall be shortened to one year and the capacity provider may not obtain a certificate for this unit as a modernized capacity market unit in two subsequent certifications for the main auction following the year in which the terms of the capacity agreement has been shortened.

3. If the capacity agreement concerns the demand side response capacity market unit referred to in Article 20(4) and the capacity provider has failed to perform the obligation referred to in Article 52(2)(2) or (3), the term of the capacity agreement shall be shortened to one year and the operator shall retain the financial security referred to in Article 50(1) as a penalty for non-performance the capacity agreement.

4. If the capacity agreement concerns a new generating capacity market unit or a modernized generating capacity market unit, which, under Article 25(5), as a result of the main auction, has concluded a capacity agreement for a term longer than that resulting from the provisions of Article 25(4) and the capacity provider has failed to perform the obligation referred to in Article 52(2)(3)(c), the term of the capacity agreement shall be shortened to the period referred to in Article 25(4), respectively.

Article 47. 1. If the capacity agreement is terminated in the case referred to in Article 46(1):

- 1) the operator shall retain or enforce the financial security referred to in Article 50(1) as a penalty for non-performance of the capacity agreement;
- 2) the capacity provider who has been released from the obligation to establish the financial security referred to in Article 50(1) shall pay a penalty equal to the amount

of the security which he would have been required to establish if he had not been released from the obligation.

2. If the capacity agreement concerns a new generating capacity market unit, the capacity provider shall pay, for each month of the delivery year which started prior to the compliance by the capacity provider with the requirements referred to in Article 52(2), a penalty equal to 15% of the value of the capacity obligation that has not been performed, calculated on the basis of the highest closing price of the capacity auction for the given delivery year.

Chapter 7

Secondary market

Article 48 1. As part of secondary market transactions, the capacity provider may:

- 1) at the end of the additional auctions – transfer to a capacity market unit of another capacity provider a capacity obligation in part or in whole, in relation to the entire delivery period or part thereof, provided that only the future part of the delivery period may be traded (capacity obligation secondary trading);
- 2) at the end of the stress period – settle in whole or in part the capacity obligation that has not been performed by providing capacity through another capacity market unit beyond the volume required in the stress period in relation to that unit in accordance with Article 57(1)(2) (performed capacity obligation volume reallocation).

2. The transactions referred to in paragraph 1:

- 1) shall involve:
 - a) capacity market units certified for the same delivery year, provided that a demand side response capacity market unit must be a proven unit,
 - b) capacity market units consisting of physical units located in the same transmission system; however, it is stipulated that the capacity obligation of a capacity market unit consisting of foreign physical units may also be transferred to a capacity market unit consisting of physical units located in the system;
- 2) may not involve:
 - a) the capacity obligation performed by a new generating capacity market unit if the capacity provider has not complied with the requirements referred to in Article 52(2),
 - b) capacity market units in respect of which the capacity provider has not paid the penalty referred to in Article 59,

- c) demand side response capacity market units that have not performed a demand side response test,
 - d) capacity market units that have completed a test stress period with a negative result – until the date of receipt of the notification referred to in Article 67(9),
 - e) capacity market units consisting of units of physical interconnector units;
- 3) must be notified to the register:
- a) 24 hours preceding the start of the period to which they relate at the latest – in the case of the transactions referred to in paragraph 1(1),
 - b) on the fifth day after the end of the given stress period – in the case of the transactions referred to in paragraph 1(2);
- 4) must comply with the other requirements set out in the regulations issued under Article 68.

Article 49. 1. The transaction referred to in Article 48(1) shall be effective provided that it has been notified to the register and the operator has not objected thereto and entered the transaction in the register.

2. The operator may object to the transaction referred to in Article 48(1) within 3 working days after receipt of the notification if the transaction violates Article 48(2).

Chapter 8

Securities

Article 50. 1. In the case of participation in the preliminary auction or issue of the conditional certificate referred to in Article 26(1), the preliminary auction participant or the capacity provider, respectively, shall be required to establish a financial security for the benefit of the operator.

2. The capacity provider shall be released from the obligation to provide the financial security if its investment grade (rating) attributed by a specialized institution is at the minimum level set forth in the regulations issued under Article 51.

3. After publishing the preliminary auction results the operator shall forthwith return to the preliminary auction participant the financial security:

- 1) provided in respect of the bids that have not been accepted;
- 2) in respect of the difference between the maximum capacity volume offered in the bids by the given preliminary auction participant, resulting from the security provided, and

the capacity volume offered in its bids.

4. After issuing a certificate for a capacity market unit consisting of one or more foreign physical units, the operator shall forthwith release the financial security provided prior to the preliminary auction in the amount equal to the product of the security rate and the volume of the capacity obligations that the capacity provider intends to offer in a given capacity auction with respect to that capacity market unit. The operator shall retain the remaining portion of the financial security.

Article 51. 1. The minister competent for energy matters shall determine, by way of a regulation, detailed conditions and manner of providing a financial security, taking into account the need to ensure proper performance of the capacity obligation by capacity providers and the proportionality of the established security.

2. The regulation referred to in paragraph 1 shall specify:

- 1) the amount of the financial security related to the volume of the capacity obligation provided by the capacity provider and the amount of the financial security provided by the preliminary auction participant;
- 2) the forms in which the financial security may be provided;
- 3) the time limit for the establishment and return of the financial security to capacity providers and preliminary auction participants;
- 4) the minimum rating level as the basis for release from the obligation to provide financial security and entities authorized to attribute such rating.

Article 52. 1. The capacity provider who has concluded a capacity agreement for a new or modernized generating capacity market unit as a result of the main auction shall provide the operator, within 12 months after the final results of the capacity auction are announced, documents confirming:

- 1) financial costs incurred at least in the amount equal to 10% of the total planned financial costs;
- 2) conclusion of agreements related to the investment of a total value of at least 20% of the total planned financial costs.

2. The capacity provider who has concluded a capacity agreement for more than one delivery period as a result of the main auction shall, prior to the commencement of the first delivery period to which the concluded capacity agreement relates, submit to the operator:

- 1) in the case of a new or modernized capacity market unit – documents confirming that unit’s ability to supply power in the volume not less than 95% of the product of the unit’s net achievable capacity and the availability correction co-efficient specified in the certificate, by continuous operation for at least one hour;
- 2) implementation of the material scope of the investment and financial costs planned to be incurred for that capacity market unit;
- 3) an independent expert opinion confirming:
 - a) incurring the financial costs referred to in Article 19(2)(1), Article 19(3)(1) or Article 20(4)(1), respectively, and
 - b) compliance with the emission requirements referred to in Article 19(2)(2)(b), Article 19(3)(4)(b), respectively, or the technical parameters referred to in Article 20(4)(2)(b),
 - c) meeting the parameter referred to in Article 25(5)(1) or Article 25(5)(2), respectively – in the case of a generating capacity market unit which, pursuant to Article 25(5), as a result of the main auction, has concluded a capacity agreement for a term longer than that resulting from Article 25(4);
- 4) the amount of the granted state aid referred to in Article 62(1).

Article 53. 1. The capacity provider shall, no later than one month before the commencement of the delivery period specified in a capacity agreement regarding an unproven demand side response capacity market unit, carry out a demand side response test, hereinafter referred to as the “test”, consisting in continuous power supply for at least one hour.

2. The operator shall carry out the test upon receipt from the capacity provider of a notification of readiness for carrying out the test. In the case of a demand side response capacity market unit comprising physical units connected to the distribution grid, the operator shall perform the test in cooperation with the distribution system operator.

3. The notification referred to in paragraph 2 may not concern a demand side response capacity market unit comprising a planned demand side response unit which has not been entirely replaced by the capacity provider with one or more physical demand side response units.

4. If, following the test, the capacity provider supplies power in a volume:

- 1) not less than 80% of the product of the net achievable capacity and the availability correction co-efficient specified in the certificate, this shall be considered a positive

test result and the operator shall issue a demand side response confirmation;

- 2) less than 80% of the product of the net achievable capacity and the availability correction co-efficient specified in the certificate, this shall be considered a negative test result.

5. Based on an application submitted no later than 3 working days after the test is carried out, the capacity provider shall receive the confirmation referred to in paragraph 4(1), even if the result is negative, if he has supplied power at a volume not less than 50% of the product of the achievable capacity and the availability correction co-efficient specified in the certificate. The confirmation determines the achievable capacity corresponding to the capacity obligation actually performed during the test. In such case, the capacity obligation of that unit and the remuneration specified in the capacity agreement and the achievable capacity specified in the certificate shall be reduced accordingly.

Article 54. The capacity provider shall have the financial security returned upon:

- 1) submission of the documents referred to in Article 52(2);
- 2) receipt of the confirmation referred to in Article 53(4)(1) or, if a capacity agreement is concluded for more than one delivery year, receipt of the confirmation and production of the documents referred to in Article 52(2);
- 3) receipt of the confirmation referred to in Article 53(5) or, if a capacity agreement is concluded for more than one delivery year, receipt of the confirmation and production of the documents referred to in Article 52(2), provided that in either case the operator shall return the financial security reduced in proportion to the value resulting from the demand side response test result;
- 4) declaration of the expiration of the certificate at the capacity provider's request, in accordance with Article 24(2)(3);
- 5) expiration of the certificate in accordance with Article 24(2)(1).

Chapter 9

Capacity market register

Article 55. 1. The register shall be maintained by the operator.

2. The register is an electronic platform designed for operating the capacity market, collecting, processing and exchanging commercial, settlement and technical data in this market and submitting statements of capacity market participants specified in the Act, including for making transactions on the secondary market.

3. The register shall include in particular details of:

- 1) certification dates, conditions and results, including data obtained;
- 2) physical units and demand side response units acquired in the general certification;
- 3) capacity market units and certificates issued for them;
- 4) capacity providers participating in the capacity market together with capacity market units held by them;
- 5) preliminary auction results, including selected bids;
- 6) capacity auction dates;
- 7) preliminary and final capacity auction results;
- 8) statements made by capacity auction participants in the course of the auction together with an indication of the time of their submission;
- 9) announced stress periods;
- 10) applicable capacity agreements;
- 11) performance of the capacity obligations;
- 12) remuneration for performance of the capacity obligation, penalties for non-performance of the capacity obligation and a bonus for performance of the capacity obligation beyond the required level;
- 13) statements of capacity market participants other than those specified in subparagraph 8;
- 14) secondary market transactions.

4. An entry in the register regarding the general certification relating to:

- 1) a planned physical generating unit – shall be valid until the end of the certification for the main auction specified in accordance with Article 12(2)(7);
- 2) a physical unit other than that referred to in subparagraph 1 – shall be valid until the start of the general certification in the subsequent year.

5. The operator shall provide access to the register to the minister competent for energy matters and the ERO President, subject to the provisions on the protection of classified information or other legally protected information.

6. The register shall be open to capacity market participants, subject to the provisions on the protection of classified information or other legally protected information.

7. The operator shall administer and process data contained in the register in the manner and on the terms specified in the provisions of the Personal Data Protection Act of 29 August 1997 (Journal of Laws of 2016, item 922).

Article 56. 1. The operator shall maintain the register and ensure that the data

recorded therein are secure, up to date and durable.

2. Data recorded in the register shall be presumed to be consistent with the facts.

3. Statements made in the register shall be submitted upon an entry being made in the register.

4. Applications, information and statements submitted in the register shall bear a qualified electronic signature.

DIVISION III

Performance of the capacity obligation and capacity market settlements

Chapter 1

Performance of the capacity obligation

Article 57. 1. The capacity obligation shall be performed by:

- 1) being ready to supply power to the system through the capacity market unit specified in the capacity agreement and
- 2) in the case of a capacity market unit consisting of physical units located in the system and a capacity market unit consisting of physical interconnector units – delivering power to the system during stress periods in a volume equivalent to the adjusted capacity obligation referred to in Article 58(1), or
- 3) delivering electricity to the transmission system of an EU member state which is directly connected to the system, or in the case of a capacity market unit consisting of foreign physical units located in the system – delivering power to the system during stress periods in a volume equivalent to the adjusted capacity obligation referred to in Article 58(1).

2. The obligation referred to in:

- 1) paragraph 1(1) shall arise on the date of commencement of the delivery period for which a capacity agreement has been concluded and shall continue until the end of that period;
- 2) paragraph 1(2) and (3) shall arise upon commencement of each stress period and shall continue until the end of that period.

3. The capacity provider shall perform the capacity obligation to supply power during a stress period to a capacity market unit located in the system:

- 1) which comprises only physical entities actively participating in the balancing system

as part of the central balancing mechanism – by ensuring the required available capacity and following the operator's instructions, in accordance with the procedures referred to in Article 9g(6) of the Energy Law of 10 April 1997;

- 2) other than as referred to in subparagraph 1 by:
 - a) generating electricity – in the case of a generating capacity market unit;
 - b) temporary reduction in electricity input from the electricity grid – in the case of a demand side response capacity market unit.

4. The capacity provider shall perform the capacity obligation to supply power during a test stress period to a capacity market unit consisting of foreign physical units by:

- 1) generating electricity – in the case of a foreign generating capacity market unit;
- 2) temporary reduction in electricity input from the electricity grid – in the case of a foreign demand side response capacity market unit.

5. The adjusted capacity obligation shall be considered performed in the stress period by capacity market units consisting of physical interconnector units if during the stress period the measured capacity flow from the zone referred to in Article 6(6), in which the unit is located, was greater than or equal to the sum of all the amounts of the adjusted capacity obligation attributable to the performance by capacity market units consisting of physical interconnector units located in a given zone.

6. In the case of the synchronous profile zone referred to in Article 6(6)(1), if the capacity obligation has not been performed in accordance with paragraph 5, such non-performance of the capacity obligation by individual capacity market units consisting of physical interconnector units shall be proportional to:

- 1) the amount of the capacity obligation of the given capacity market unit and inversely proportional to the sum of the capacity obligations of all capacity market units in a given zone – if the operator and all capacity providers that have capacity market units consisting of physical interconnector units have provided transmission capacities corresponding at least to the adjusted capacity obligations of individual units;
- 2) the missing volume of transmission capacities made available for a given interconnector and inversely proportional to the sum of all missing transmission capacities available for all interconnectors in a given zone – if the operator or capacity providers have failed to provide transmission capacities for one or more interconnectors in the amount equal to or greater than the amount of the adjusted capacity obligations of capacity market units corresponding to individual interconnectors.

7. The adjusted capacity obligation shall be considered performed in the stress period by capacity market units consisting of foreign physical units if:

- 1) during the stress period the measured capacity flow from the zone referred to in Article 6(6) in which the given unit is located was greater than or equal to the sum of all the amounts of the adjusted capacity obligation attributable to the performance by capacity market units located in a given zone, or
- 2) power delivered by the given unit to the system directly connected to the system as a result of electricity generation or electricity consumption reduction was not lower than the adjusted capacity for this unit, or
- 3) power delivered by the given unit to the system directly connected to the system as a result of electricity generation or demand reduction, increased by unused valid electricity generation or electricity consumption reduction bids submitted by the unit on the power exchange, was not lower than the adjusted capacity obligation of that unit, or
- 4) power delivered by the given unit to the system directly connected to the system as a result of electricity generation or demand reduction, increased by unused valid electricity generation or electricity consumption reduction bids submitted by the unit on the power exchange and the balancing market, was not lower than the adjusted capacity obligation of that unit.

8. In the case of demand side response capacity market units consisting of foreign physical demand side response units, the condition of the validity of the bid referred to in paragraph 7(3) and (4) shall include the amount of the demand side response bid price not higher than twice the average price prevailing on the power exchange in a given delivery year.

9. The operator shall shall announce a stress period by publishing warnings on its website and making a relevant entry in the register. A warning shall be published no later than eight hours prior to the commencement of the stress period.

10. The operator needs not announce the stress period despite a reduction in excess capacity available in the system daily work planning process below the required value determined in accordance with Article 9g(4)(9) of the Energy Law of 10 April 1997, in the cases referred to in the regulations issued under Article 68.

Article 58. 1. An adjusted capacity obligation of a capacity market unit shall be calculated on the basis of:

- 1) the amount of the capacity obligation resulting from capacity agreements relating to that unit;
- 2) forecast:
 - a) demand for power in the system during the stress period,
 - b) electricity generation in generating physical units not subject to the capacity obligation;
- 3) the total amount of capacity obligations covered by the capacity agreements during the delivery period, subject to paragraph 4.

2. Upon announcement of a stress period, the operator shall publish information enabling the capacity provider to estimate the adjusted capacity obligation, including the amounts referred to in paragraph 1(2) and (3).

3. The adjusted capacity obligation of the capacity market unit shall be lower than or equal to the amount of the capacity obligation resulting from capacity agreements relating to that unit.

4. When settling the performance of the capacity obligation to supply power in the stress period, the inability to deliver the portion that has not been delivered as a result of:

- 1) grid congestion resulting from work instructions issued by the operator or the distribution system operator;
- 2) a sudden, unforeseeable event beyond the parties' control, the consequences of which could not reasonably be avoided or overcome, which prevents the capacity provider from performing the capacity obligation the volume of which exceeds 40% (force majeure), shall be taken into account.

5. The distribution system operator shall provide the operator with measuring data relating to physical units forming a capacity market unit for the purpose of verifying performance of the capacity obligation and for the purpose of making settlements. The provision of Article 9c(3a) of the Energy Law of 10 April 1997 shall apply accordingly.

6. The operator shall notify the capacity provider and the settlement body of the performance of the capacity obligation by the capacity provider in a given month, within 7 days after the end of each month.

Article 59. 1. A capacity provider who fails to perform the capacity obligation in accordance with Articles 57 and 58 shall pay a penalty to the operator.

2. The amount of the penalty referred to in paragraph 1 shall be calculated as the product of the amount of the capacity obligation that has not been performed and the unit

penalty rate calculated in the manner specified in the regulations issued under Article 68.

3. If non-performance of the capacity obligation concerns a capacity market unit consisting of physical interconnector units:

- 1) if the cross-border exchange capacities on interconnectors for the capacity market unit, made available by the operator, were at least equal to the capacity obligation of that unit, and the cross-border exchange capacities made available by the capacity provider were lower than the capacity obligation – the penalty shall be charged on the capacity provider;
- 2) if the cross-border exchange capacities on interconnectors for the capacity market unit, made available by the capacity provider, were at least equal to the capacity obligation of that unit, and the cross-border exchange capacities made available by the operator were lower than the capacity obligation – the penalty shall be charged on the operator;
- 3) in cases other than those referred to in paragraphs 1 and 2 – the penalty shall be charged on the operator and the capacity provider equally.

4. The sum of the penalties payable by the capacity provider for non-performance of the capacity obligation in respect of one capacity market unit in the delivery year may not exceed twice the product of the highest capacity obligation in a given delivery year of the unit to which the capacity agreement relates and the highest capacity auction clearing for a given delivery year.

5. The sum of the penalties payable by the capacity provider in a month may not exceed one fifth of the maximum allowable amount of penalties referred to in paragraph 4.

6. The provisions of paragraphs 4 and 5 shall apply accordingly to the penalties referred to in paragraph 3 with the operator and the capacity provider being considered jointly as one capacity provider.

7. One month shall be a settlement period for the penalties.

Chapter 2

Remuneration for the performance of the capacity obligation and the settlement process

Article 60. 1. The capacity provider shall receive remuneration for the performance of the capacity obligation after the end of each month of the delivery period. In respect of the performance of the capacity obligation the capacity provider shall issue an invoice to the operator on the basis of the information referred to in Article 58(6).

2. The remuneration for the performance of the capacity obligation in a given month:

- 1) shall be determined separately for each capacity market unit;
- 2) shall be calculated as the sum of the products of the capacity obligations in hours of the month, in accordance with the information referred to in Article 58(6), and the price of the capacity obligation corresponding to the given capacity obligation, subject to Article 62.
3. The price of the capacity obligation specified in the capacity agreement shall be the closing price of the main auction or the additional auction.
4. The capacity obligation price for multi-year capacity agreements shall be adjusted annually on the basis of the average annual price index of consumer goods and services specified in the press release of the President of the Polish Central Statistical Office, published in the Official Gazette of the Republic of Poland "*Monitor Polski*" for the year preceding the year in which capacity fee rates for the given delivery year are determined.

Article 61. 1. Capacity market financial settlements shall be the responsibility of a capacity market settlement body hereinafter referred to as the "settlement body".

2. The duties of the settlement body shall be performed by Zarządca Rozliczeń S.A. referred to in Chapter 7 of the Act of 29 June 2007 on the rules for covering costs incurred by generators in connection with the early termination of long-term capacity and electricity sales agreements (Journal of Laws of 2017, item 569).

3. The remuneration referred to in Article 60(1) shall be paid to the capacity provider by the settlement body on the basis of the operator's written instructions containing a summary of the gross amounts payable for the given month to each capacity provider.

Article 62. 1. The remuneration for the performance the capacity obligation for a new and modernized generating capacity market unit shall be reduced by the amount of the investment state aid earmarked for the construction or modernization of the unit, granted until the commencement of the first delivery period for that unit.

2. The remuneration referred to in paragraph 1 shall be reduced proportionally throughout the term of the capacity agreement while reducing the capacity obligation price.

Article 63. 1. The remuneration for the performance of the capacity obligation for a generating capacity market unit consisting of a physical unit being a multi-fuel firing plant within the meaning of Article 2 subparagraph 15 of the Renewable Energy Sources Act of 20 February 2015 and the hybrid system within the meaning of Article 2 subparagraph 34 thereof shall be adjusted in connection with the receipt of certificates of origin within the meaning of that Act.

2. The adjustment referred to in paragraph 1 shall be made in respect of a given period by reducing the capacity obligation for which the remuneration is due by the capacity volume resulting from the certificates of origin issued for that period under the Act referred to in paragraph 1. The adjustment may not be higher than the remuneration resulting from the amount of the capacity obligation and the capacity obligation price.

3. The remuneration for the performance of the capacity obligation for the capacity market unit referred to in paragraph 1 shall be paid upon provision of information on the certificates of origin issued for the given period, as referred to in the act referred to in paragraph 1, that are necessary for calculating the adjustment.

4. The operator or settlement body may apply to the ERO President to provide information enabling the verification of the information referred to in paragraph 3.

Article 64. The remuneration for the performance of the capacity obligation for a capacity market unit consisting of:

- 1) a foreign physical unit – shall be paid on presentation by the transmission system operator competent for the location of this unit of metering and settlement data for the given period or other information that allow for settlements to be made;
- 2) a physical interconnector unit – shall be distributed equally between the capacity provider and the operator.

Article 65. The remuneration for the performance of the capacity obligation and the bonus referred to in Article 66(1) shall be increased by the due goods and services tax within the meaning of the Goods and Services Tax Act of 11 March 2004 (Journal of Laws of 2017, item 1221).

Article 66. 1. A capacity provider that, during a given stress period, has delivered power in excess of the adjusted capacity obligation of the capacity market unit located in the system shall receive a bonus resulting from the redistribution of funds derived from penalties for non-performance of the capacity obligation, if these have been calculated, hereinafter referred to as the “bonus”.

2. The bonus shall also be paid to a capacity provider that, during a stress period, has delivered power through a capacity market unit certified for the given delivery year, but has not concluded a capacity agreement in relation to that unit covering the period during which the stress period occurred.

3. A calendar year shall be the settlement period in respect of the bonus.

4. The bonus payable to a capacity provider shall be calculated in proportion to the

excess power delivered by that provider and the amount of penalties for non-performance of the capacity obligations charged during the settlement period referred to in paragraph 3.

5. The sum of the bonuses payable to all capacity providers for delivering power in excess of the capacity obligation may not exceed the total amount of penalties for non-performance of the capacity obligation in a given delivery year and the unit price of capacity provided in excess of the capacity obligation, used for calculating the amount of the bonus may not be greater than twice the unit rate of the penalty for non-performance of the capacity obligation in the given delivery period.

6. A capacity provider shall, at the end of each calendar year, issue an invoice to the operator relating to the bonus in a given year on the basis of the operator's information furnished to the capacity provider by the end of the month following the end of the year.

7. The bonus shall be paid by the settlement body on the basis of the operator's written instructions containing a summary of the gross amounts payable for the calendar year to each capacity provider.

Article 67. 1. At the end of each quarter falling in the delivery year, the capacity provider who was a party to a capacity agreement shall demonstrate to the operator his ability to perform the capacity obligation in relation to each capacity market unit to which the capacity agreement relates.

2. The ability to perform the capacity obligation shall be demonstrated by specifying to the operator referred to in the regulations issued under Article 68 the number of hours in each quarter in which the capacity market unit delivered power to the system (demonstration).

3. Delivery of power to the system for demonstration purposes shall be construed:

- 1) in the case of a demand side response capacity market unit – as a reduction in consumption of electricity taken from the electricity grid in a volume not less than the highest capacity obligation of that unit in the delivery quarter;
- 2) in the case of a generating capacity market unit – as generation of electricity in a volume not less than the highest capacity obligation of this unit in the delivery quarter.

4. The capacity provider shall return to the operator remuneration for the performance of the capacity obligation due under an agreement relating to a capacity market unit in respect of which he has failed to perform a demonstration in accordance with paragraphs (1) to (3). The obligation to return the remuneration shall include the remuneration due for the entire quarter in respect of which the capacity provider has failed

to perform a demonstration.

5. Notwithstanding the obligations referred to in paragraphs 1 to 3, the operator may announce a test stress period for the selected capacity market units that are subject to the capacity obligation. If the test stress period result is positive, the operator shall, at the capacity provider's request, pay reasonable costs related to its performance for the capacity market unit, except that the compensation may not be higher than the equivalent of the capacity provider's weekly remuneration in respect of that capacity market unit.

6. The result of the test stress period for the capacity provider in relation to whom the operator has announced the test stress period shall be:

- 1) positive if the power supplied by a capacity market unit is not less than the full amount of the capacity obligation during the test stress period, or
- 2) negative under any circumstances other than those referred to in subparagraph 1.

7. The operator may announce a test stress period in relation to one capacity market unit once a quarter as a maximum. If the test stress period result is negative, the operator may announce further test stress periods in the same quarter after the capacity provider has notified readiness until such time as a positive result is obtained.

8. If the test stress period is negative, the capacity provider shall each time pay a penalty for non-performance of the capacity obligation. The provisions of Article 59(2) and Article 59(4) to (7) shall apply accordingly.

9. The capacity provider shall not be entitled to remuneration for the performance of the capacity obligation during the period commencing on the date of the test stress period that ended in a negative result and ending on the date of receipt from the capacity provider of a notification of readiness to perform the capacity obligation through a capacity market unit.

10. Non-payment of the remuneration for the performance of the capacity obligation during the period referred to in paragraph 9 shall not release the capacity provider from the obligation to supply power during the stress period.

11. The operator shall forthwith inform the settlement body of the capacity provider's failure to perform the demonstration or tests referred to in paragraphs 2 and 5.

Article 68. 1. The minister competent for energy matters shall determine, by way of a regulation, detailed terms and manner of performing, settling and demonstrating the capacity obligation, as well as the detailed terms of entering into transactions on the secondary market, taking into account equal and non-discriminatory treatment of capacity

providers, applying the level of incentives and penalties ensuring the performance of capacity obligations, security of electricity supply to final customers and efficient execution of transactions, as well as restricting the application of manipulation mechanisms and abuse of market position by capacity providers.

2. The regulation referred to in paragraph 1 shall specify:

- 1) the standard security of electricity supply to final customers construed as a permissible loss of load expectation expressed in hours per year;
- 2) procedure for announcing the stress period and the cases in which the operator may not announce the stress period despite a reduction in excess capacity available in the work system daily planning processes below the required value;
- 3) days and times when a stress period is likely to occur;
- 4) method of determining the volume of power supplied as a result of temporary reduction in electricity input from the electricity grid by demand side response capacity market units;
- 5) manner in which the demonstration should be performed;
- 6) requirements relating to the admissibility of trading in capacity obligations and their reallocation, including the minimum amount of the obligation that may be transferred;
- 7) method of calculating the unit rate of a penalty for non-performance of the capacity obligation.

Chapter 3

Capacity fee

Article 69. 1. The operator shall charge a fee for payment of the remuneration for the performance of capacity obligations representing the costs of purchased capacity obligation and reasonable costs of the settlements referred to in Article 77(4), hereinafter referred to as the “capacity fee”.

2. The operator shall charge the capacity fee on:

- 1) a final customer connected directly to the transmission grid;
- 2) the electricity distribution system operator hereinafter referred to as the “capacity fee payer”;
- 3) an energy enterprise involved in electricity transmission or distribution, which is not a capacity fee payer, directly connected to the transmission grid;

4) an energy enterprise generating electricity connected directly to the transmission grid.

3. A capacity fee payer shall charge a capacity fee on the following entities that are connected directly to its distribution grid:

- 1) a final customer;
- 2) an energy enterprise involved in electricity transmission or distribution, which is not a capacity fee payer;
- 3) an energy enterprise generating electricity.

4. An energy enterprise involved in electricity transmission or distribution, which is not a capacity fee payer, shall charge a capacity fee on the following entities that are connected directly to the distribution grid of that enterprise:

- 1) a final customer;
- 2) an energy enterprise generating electricity;
- 3) an energy enterprise involved in electricity transmission or distribution, which is not a capacity fee payer.

5. An energy enterprise generating electricity shall charge a capacity fee on the following entities that are connected directly to the equipment, installation or grid of that enterprise:

- 1) a final customer;
- 2) an energy enterprise providing electricity transmission or distribution services that is not a capacity fee payer.

6. An energy enterprise involved in electricity transmission, distribution or generation shall be considered a final customer to the extent it receives or consumes electricity from the equipment, installations or grids of the energy enterprise under an agreement with the energy enterprise and uses it for own purposes. The term “own purposes” shall not include electricity used for the purpose of generating, transmitting or distributing electricity.

7. The enterprise referred to in paragraph 6 shall pay a capacity fee to the enterprise to whose equipment, installation or grid it is connected.

8. The operator, the capacity fee payer and the energy enterprise involved in electricity transmission, distribution or generation, which is not a capacity fee payer, shall take into account the capacity fee rates referred to in Article 70 and the terms of their application in the tariff for electricity transmission, distribution or sale.

Article 70. 1. The capacity fee rates shall be determined separately in relation to final

customers:

- 1) receiving electricity in the household – as a monthly rate depending on the annual electricity consumption, payable for the electricity input point construed as a point in the electricity grid in which electricity input is measured by the metering and settlement system specified in an electricity distribution services agreement or in an electricity sale agreement or in a master agreement;
- 2) other than those referred to in subparagraph 1 – as the rate applicable to the volume of electricity taken from the grid at selected day times, expressed in PLN per kWh of electricity.

2. The capacity fee due from the final customer referred to in paragraph 1(2) shall be calculated as the product of the capacity fee rate for a given group of customers and the volume of electricity taken from the grid at selected day times.

3. The basis for calculating the capacity fee charged on an industrial customer who submitted the statement referred to in Article 1(2) and for whom the value of the electricity consumption intensity co-efficient was:

- 1) not lower than 3% and not greater than 20% – 80%,
- 2) greater than 20% and not greater than 40% – 60%,
- 3) greater than 40% – 15%

of the volume of electricity taken from the grid and consumed by that consumer at selected day times.

4. The capacity fee due from the enterprise involved in electricity transmission, distribution or electricity shall be calculated as:

- 1) the sum of the products of the capacity fee rate for each band of annual electricity consumption and the number of final customers referred to in paragraph 1(1);
- 2) the sum of the products of the capacity fee rate for the given group of customers and the volume of electricity taken from the grid in selected day times by final customers referred to in paragraph 1(2).

Article 71. 1. An industrial customer shall be construed as the final customer:

- 1) whose prevailing economic activity is the activity specified in the Polish Classification of Activities (PKD) and identified with the following codes: 0510; 0729; 0811; 0891; 0893; 0899; 1032; 1039; 1041; 1062; 1104; 1106; 1310; 1320; 1394; 1395; 1411; 1610; 1621; 1711; 1712; 1722; 1920; 2012; 2013; 2014; 2015; 2016; 2017; 2060; 2110; 2221; 2222; 2311; 2312; 2313; 2314; 2319; 2320; 2331;

2342; 2343; 2349; 2399; 2410; 2420; 2431; 2432; 2434; 2441; 2442; 2443; 2444;
2445; 2446; 2720; 3299; 2011; 2332; 2351; 2352; 2451; 2453; 2454; 2611; 2680;
3832;

- 2) for whom the value of the electricity consumption intensity co-efficient is not less than 3%;
- 3) who consumed not less than 100 GWh of electricity in the calendar year preceding the year for which the capacity fee is charged.

2. An industrial customer shall submit to the ERO President a statement confirming:

- 1) conduct of economic activity identified with the codes of the Polish Classification of Activities (PKD) referred to in paragraph 1(1),
- 2) the volume of electricity consumed in the calendar year preceding the year for which the capacity fee is charged,
- 3) the value of the electricity consumption intensity co-efficient,
- 4) the volume of electricity taken as the basis for calculating the capacity fee expressed as a percentage,

accompanied by the statutory auditor's opinion confirming correct calculation of the value of the electricity consumption intensity co-efficient, by 30 November of the year preceding the year for which the capacity fee is charged.

3. The ERO President shall draw up a list of industrial customers who have submitted the statement referred to in paragraph 2, together with the information referred to in paragraph 4, and shall announce it in the Public Information Bulletin of the Energy Regulatory Office by 31 December of the year preceding the year for which the capacity fee is charged.

4. The information referred to above shall include:

- 1) the industrial customer's name and address;
- 2) number in the Register of Businesses of the National Court Register or tax identification number (NIP);
- 3) details of the volume of electricity being the basis for calculating the capacity fee, expressed as a percentage.

5. The industrial customer who made the statement referred to in paragraph 2 shall, by 31 August of the year following the year for which the capacity fee is charged, submit to the ERO President:

- 1) information on:
 - a) the volume of electricity taken from the grid and consumed in the year of

performance of the obligation,

- b) compliance with the requirements referred to in paragraph 1;
- 2) statement reading as follows:

“Being aware of criminal liability for false representations under Article 233(6) of the Criminal Code of 6 June 1997, I state that:

1) the data contained in the information referred to in Article 71(5)(1) of the Capacity Market Act of 8 December 2017 (Journal of Laws, item ...) are true and accurate;

2) I am aware of and comply with the requirements set out in Article 70(3) of the Act referred to in paragraph 1”;

the aforesaid clause replacing the authority’s advice of criminal liability for false representations.

Article 72. The regulations issued under Article 53(4) of the Renewable Energy Sources Act of 20 February 2015 shall apply accordingly to the calculation of the electricity consumption intensity co-efficient referred to in Article 70(3).

Article 73. An industrial customer who fails to timely provide the ERO President with the information and statements referred to in Article 71(5) or who has provided false or misleading data or has used the entitlement referred to in Article 70(3) without complying with the requirements set out therein may not use the entitlement referred to in Article 70(3) for a period of 5 years from the end of the year for which the capacity fee has been charged.

Article 74. 1. For the purpose of calculating the capacity fee rates, the total capacity market cost in a given delivery year shall be calculated in accordance with the formula:

$$K_C = K_{AG} + K_{AD} + K_R - B,$$

where:

K_C – means the total capacity market cost in a given delivery year,

K_{AG} – means the sum of the products of capacity obligations and closing prices of the main auction for a given delivery year,

K_{AD} – means the sum of the products of capacity obligations and relevant closing prices of the additional auctions for a given delivery year,

K_R – means the costs referred to in Article 77(3) and (4),

B – means the forecast balance of cash on the capacity fee account as at 31 December of the given year, without taking into account the proceeds from

penalties for non-performance of the capacity obligation in a given year.

2. By 31 August of each year, the settlement body shall provide the ERO President with information on:

- 1) the costs referred to in Article 77(3) and (4);
- 2) the forecast balance of cash on the capacity fee account as at 31 December of the given year.

3. The ERO President shall calculate the capacity fee rates for a calendar year less the due goods and services tax within the meaning of the Goods and Services Tax Act of 11 March 2004.

4. By 30 September of each year, the ERO President shall publish in the Bulletin of the Energy Regulatory Office:

- 1) the capacity fee rates for the subsequent year;
- 2) selected day times falling at times of peak demand for power in the system, determined separately for quarters of the delivery year – for the purpose of calculating the capacity fee payable by the customers referred to in Article 70(1)(2).

5. The ERO President may determine different capacity fee rates for individual quarters of the delivery year with respect to the customers referred to in Article 70(1)(2), while taking into account in the rates calculated in accordance with paragraph 1 seasonal volatility in the power demand in the system on the terms set out in the regulations issued under Article 76.

6. The ERO President shall, on the basis of data from the year preceding the year of determining the capacity market rates, calculate the cost for a group of customers referred to in Article 70(1)(1) in accordance with the formula:

$$K_{GD} = (Z_{GD}/Z_K - R) \times K_C,$$

where:

K_{GD} – means the capacity market cost for the group of customers referred to in Article 70(1)(1),

Z_{GD} – means the annual electricity consumption in households.

Z_K – means the annual electricity consumption in the system by final consumers.

R – means the volume of electricity resulting from the entitlements referred to in Article 70(3) conferred on industrial customers in a given delivery year,

K_C – means the total capacity market cost in a given delivery year.

7. The ERO President shall calculate capacity market rate for the final customers

referred to in Article 70(1)(1) separately with respect to the final consumers receiving electricity in households, consuming annually:

- 1) below 500 kWh of electricity;
- 2) between 500 kWh and 1200 kWh of electricity;
- 3) above 1200 kWh up to 2800 kWh of electricity;
- 4) above 2800 kWh of electricity.

8. In order to determine separate capacity fee rates for households, the ERO President shall determine a base rate in accordance with the formula:

$$S = \frac{K_{GD}}{0.25 \times a + 0.6 \times b + c + 1.4 \times d},$$

where:

S – means the base rate,

K_{GD} – means the capacity market cost for the group of customers referred to in Article 70(1)(1),

a – means the number of households consuming annually below 500 kWh of electricity,

b – means the number of households consuming annually between 500 kWh and 1200 kWh of electricity,

c – the number of households consuming annually above 1200 kWh up to 2800 kWh of electricity,

d – the number of households consuming annually above 2800 kWh of electricity.

9. The capacity fee rates for individual households shall be as follows:

- 1) $0.25 \times S / 12$ per month – with respect to the customers referred to in paragraph 7(1);
- 2) $0.6 \times S / 12$ per month – with respect to the customers referred to in paragraph 7(2);
- 3) $1 \times S / 12$ per month – with respect to the customers referred to in paragraph 7(3);
- 4) $1.4 \times S / 12$ per month – with respect to the customers referred to in paragraph 7(4).

10. The ERO President shall calculate the capacity market cost for the group of customers referred to in Article 70(1)(2) in accordance with the formula:

$$K_P = K_C - K_{GD},$$

where:

K_P – means the capacity market cost for the group of customers referred to in Article 70(1)(2),

K_C – means the total capacity market cost in a given delivery year,

K_{GD} – means the capacity market cost for the group of customers referred to in Article 70(1)(1).

11. The ERO President shall calculate the capacity fee rates for the final customers referred to in Article 70(1)(2) according to the cost determined for this group of customers in accordance with paragraph 10 and the volume of electricity received from the grid and consumed by such customers at selected day times referred to in paragraph 4(2), subject to Article 70(3). In order to determine such rates, the ERO President shall use data from the year preceding the year of determining the rates.

Article 75. 1. The enterprises referred to in Article 69(2)(2) to (4) shall provide the operator with information about the sum of capacity fees payable to the extent and within the time limits specified in the regulations issued under Article 76.

2. The operator shall:

- 1) collect from the entities referred to in Article 69(2) a capacity fee in the amount due, less any claims for the capacity fee relating to previous settlement periods written off in such settlement period as bad debts within the meaning of Article 16(2) of the Corporate Income Tax Act of 15 February 1992 (Journal of Laws of 2016, item 1888, as amended⁴);
- 2) accumulate funds from the capacity fee.

3. The entities referred to in Article 69(2) shall provide the operator funds derived from the capacity fee due for a given settlement period in the manner and within the time limits specified in the regulations issued under Article 76.

4. If an energy enterprise generating electricity is at the same time connected to the transmission grid and the distribution grid of the capacity fee payer, the funds from the collected capacity fee shall be transferred to the operator.

5. A final customer, an energy enterprise involved in electricity transmission or distribution, which is not a capacity fee payer, and an energy enterprise generating electricity, that are connected to the distribution network, shall transfer funds from the capacity fee to the capacity fee payer within the period specified in the regulations issued under Article 76.

6. The operator and the capacity fee payer shall prepare and submit to the ERO President written information for each quarter in which the capacity fee is charged,

⁴ Amendments to the consolidated text of the act were announced in the Journal of Laws of 2016, items 1926, 1933 and 1948 and of 2017, items 60, 624, 648, 1089, 1448, 1566, 2056, 2175 and 2201.

containing details of:

- 1) the number of electricity input points referred to in Article 70(1)(1), together with the corresponding annual electricity consumption bands,
- 2) the volume of electricity received from the grid by the customers referred to in Article 70(1)(2) at selected day times referred to in Article 70(4)(2),
- 3) the amount of the funds from the capacity fee payable and paid in a given quarter by entities liable to its payment,

within one month following the end of the quarter for which the information is prepared.

7. An energy enterprise involved in electricity transmission or distribution, which is not a capacity fee payer, and an electricity enterprise generating electricity, that are connected to the distribution grid shall provide the capacity fee payer with information about the total capacity fees due and the information referred to in paragraph 6, within the time limits referred to in the regulations issued under Article 76.

Article 76. The minister competent for energy matters shall determine, by way of a regulation, a detailed method of collecting a capacity fee, including the time limits and manner of transferring funds from the capacity fee to the operator, the scope and time limit for providing the operator and the capacity fee payer with information, including information on the total capacity fees due and settlement periods among the operator, the capacity fee payer and other entities liable to pay the capacity fee, respectively, as well as the manner of determining the times of peak demand for power in the system for the purposes of calculating the capacity fee payable by the customers referred to in Article 70(1)(2), while ensuring the expedient process of raising funds from the capacity fee and encouraging customers to reasonably use electricity within a day.

Article 77. 1. Funds from the capacity fee, as well as retained financial security and penalties, excluding those referred to in Article 85, returned remuneration for the performance of the capacity obligation referred to in Article 67(4) and interest on such funds shall be the property of the operator.

2. The operator shall entrust to the settlement body the funds referred to in paragraph 1 accumulated for a given settlement period, less the due goods and services tax, plus the amount equivalent to the goods and services tax referred to in the written instructions for payment referred to in Article 61(3), by making a payment to a separate bank account, hereinafter referred to as the “capacity fee account”, by the end of the month following the end of the settlement period. If the amount of the goods and services tax

specified on the invoices issued by capacity providers exceeds the amount of the goods and services tax due on the funds referred to in paragraph 1, the operator shall pay the difference to the capacity fee account within 3 months from the end of the settlement period.

3. The settlement body shall manage the entrusted funds derived from the capacity fee and otherwise as provided for by the Act, accumulated on the capacity fee account, on the terms set out in Article 54(1) of the Act of 29 June 2007 on the rules for covering costs incurred by generators in connection with the early termination of long-term capacity and electricity sales agreements, and shall ensure the financial liquidity of the settlements under capacity agreements, including by raising debt for payment of remuneration for the performance of the capacity obligation. The debt, including the costs of its servicing, shall be repaid from the funds accumulated in the capacity fee account.

4. For the management of the funds from the capacity fee the settlement operator shall receive remuneration equal to reasonable costs incurred in relation to such activity, comprising the costs of the capacity fee account management, costs of the financial settlements in the capacity market and the costs of managing financial liquidity in the capacity market. Such remuneration shall be financed with the funds derived from the capacity fee.

5. Funds accumulated in the transitional fee account referred to in Article 17(3) of the Act referred to in paragraph 3 may be allocated to cover the shortage of funds in the capacity fee account provided that this does not result in non-performance of obligations under the Act referred to in paragraph 3. Any funds used from the transitional fee account shall be refunded in full to the transitional fee account.

6. The transactions referred to in paragraphs 3 and 5 shall not constitute a loan agreement within the meaning of the Civil Code of 23 April 1964 (Journal of Laws of 2017, items 459, 933 and 1132) and the Act on Civil-Law Transactions Tax of 9 September 2000 (Journal of Laws of 2017, item 1150) and shall not be subject to such tax.

7. The operator shall use the financial excess resulting from the difference between the auction closing price and the price for capacity market units consisting of foreign physical units in a single zone in the manner specified in Article 16(6) of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 and to cover the costs of the operator which the agreement referred to in Article 6(4) was concluded.

8. The operator shall use income from the remuneration referred to in Article 64

subparagraph 2 in the manner specified in Article 16(6) of the regulation referred to in paragraph 7.

Article 78. 1. The funds from the capacity fee, excluding the settlement body's remuneration referred to in Article 77(4) shall not constitute the settlement body's revenue within the meaning of the Corporate Income Tax Act of 15 February 1992.

2. The funds provided to the capacity provider by the settlement body under this Act shall not constitute tax deductible costs within the meaning of the act referred to in paragraph 1.

3. The operator shall create a reserve against costs up to the amount due from the capacity fee less the due goods and services tax. The reserve shall be created accordingly on the date on which the capacity fee becomes due.

4. The reserve referred to in paragraph 3 shall also be increased by statutory interest on funds derived from the capacity fee accumulated in a separate account if such interest constitutes revenue for the operator within the meaning of the act referred to in paragraph 1.

5. The reserve referred to in paragraph 3 shall be reduced or released in the month in which:

- 1) the operator includes in tax deductible costs within the meaning of the act referred to in paragraph 1 remuneration for the performance of the capacity obligation or the bonus referred to in Article 66(1) in the amount equal to such remuneration or bonus, less the due goods and services tax, or
- 2) the reasons for the creation of such reserve cease to exist.

6. The equivalent of the reduced or released reserve referred to in paragraph 3 shall constitute the operator's revenue within the meaning of the act referred to in paragraph 1 on the date such activity is performed.

DIVISION IV

Dispute settlement and capacity market rules

Chapter 1

Dispute settlement

Article 79. Any dispute concerning:

- 1) certification processes in respect of:
 - a) refusal to enter a physical unit in the register by the operator,
 - b) refusal to issue a certificate by the operator or to issue a certificate with the

- parameters deviating from those referred to in the application for certification,
- c) unequal treatment of the owners of physical units or entities authorized by them or capacity providers,
 - d) conduct of the certification processes by the operator in violation of the provisions or capacity market rules referred to in Article 83,
- 2) capacity auction in respect of:
- a) conduct of the auction participants inconsistent with the provisions or capacity market rules referred to in Article 83,
 - b) conduct of the capacity auction by the operator in violation of the provisions or capacity market rules referred to in Article 83,
 - c) non-admission of a capacity market unit to participate in the capacity auction,
- 3) trading in a capacity obligation on the secondary market, including an objection raised by the operator with respect to transactions on the secondary market,
- 4) details entered in the register or details the entry of which has been refused,
- 5) breach by the operator of the rules of announcing the stress period,
- 6) preliminary auction,
- shall be settled, on the party's application, by the ERO President in a decision.

Article 80. An application to settle the dispute shall be filed with the ERO President after the appeal is heard in the manner set out in the capacity market rules insofar as the latter permits such appeal to be filed in the case. Filing of an application shall not stay the activities performed in the capacity market to which the dispute relates, nor shall the dispute settlement violate the rights or obligations of the capacity market participants resulting from ongoing or completed activities in the capacity market.

Article 81. 1. A party may appeal against the decision of the ERO President issued in accordance with this Act to the District Court in Warsaw – Competition and Consumer Protection Court within 14 days of being served therewith.

2. The proceedings on appeal against the decision of the ERO President shall be conducted in accordance with the provisions of the Code of Civil Procedure of 17 November 1964 (Journal of Laws of 2016, item 1822, as amended⁵) on proceedings in energy matters.

Chapter 2

⁵ Amendments to the consolidated text of the act were announced in the Journal of Laws of 2016, items 1823, 1860, 1948, 2138, 2199, 2260 and 2261 and of 2017, items 67, 85, 187, 768, 933, 1133, 1136, 1452, 1475, 1596, 1727, 1883 and 2180.

Capacity market rules

Article 82. The operator shall develop the capacity market rules specifying the detailed terms of cooperation among the capacity market participants.

Article 83. The capacity market power rules shall set out the terms of cooperation between the operator and the other capacity market participants, in particular:

- 1) the organization and course of the certification, including:
 - a) detailed list and form of information provided to the operator,
 - b) manner of exchanging information between capacity market participants,
 - c) manner of filing and hearing appeals against the operator's determinations,
 - d) scope of technical and economic data provided for certification purposes and the manner of calculating such data,
 - e) templates of forms and documents used,
 - f) manner of cooperation of the distribution system operator to whose grid physical units are connected, with the operator,
 - g) detailed certification timetable,
 - h) time limit for curing defects or formal defects in the application referred to in Article 13(1) and Article 22(1),
 - i) manner of verifying the parameters of physical generating units, physical demand side response units or capacity market units,
 - j) guidelines relating to a business plan submitted by a planned demand side response unit;
- 2) detailed conditions of conducting the capacity auction, including:
 - a) auction clearing algorithm,
 - b) gaining access and use of a dedicated IT system, including technical requirements for the system users,
 - c) bidding process and the course of the capacity auction;
- 3) specific scope of information contained in the register;
- 4) conditions of use of the register by capacity market participants, including:
 - a) form of data stored and processed in the register,
 - b) technical requirements for the register users,
 - c) manner of gaining access to the register in particular setting out the scope of data accessible by individual capacity market participants,
 - d) its functionality in processing, copying and making extracts from data,

- e) procedure for registering transactions on the secondary market,
 - f) ensuring data security and information protection;
- 5) procedures related to power supply, including detailed conditions and manner of:
- a) settling the performance of the capacity obligation, including the determination of the adjusted capacity obligation during the stress period,
 - b) demonstration,
 - c) determining the volume of power supplied, including the method of determining the volume of the power supplied as a result of the temporary reduction in electricity input,
 - d) performing the test;
- 6) time limit for verifying the performance of the capacity obligation during the stress period;
- 7) manner of verifying the performance of the adjusted capacity obligation;
- 8) formula for calculating the remuneration referred to in Article 62;
- 9) manner of exchanging metering and settlement data between the operator and the transmission system operator competent for the location of a foreign physical generating unit or a foreign physical demand side response unit and the template of the commitment referred to in Article 19(4)(4);
- 10) detailed conditions and the manner of conducting the preliminary auction and the auction terms;
- 11) terms and conditions for notifying foreign physical units to the register.

Article 84. 1. The operator shall publish on its website information about public access to the draft capacity market rules and the right to submit comments, specifying the place and time limit for submitting them, which cannot be shorter than 14 days of the draft being made available.

2. The operator shall submit to the ERO President, for approval, the draft capacity market rules together with information about the comments submitted and the manner of their consideration. The operator shall post such documents on its website and shall submit them to the minister competent for energy matters.

3. The ERO President shall, in consultation with the minister competent for energy matters, approve or refuse to approve the capacity market rules, by way of a decision, within 45 days. The decision of the minister responsible for energy matters may not be appealed.

4. In the event of refusal to approve the capacity market rules, the ERO President shall give reasons for his refusal, propose modifications and specify the time limit for

submitting new draft capacity market rules.

5. The operator shall forthwith publish on its website the capacity market rules approved by the ERO President.

6. Filing an appeal against the decision referred to in paragraph 3 shall not suspend the obligation to submit new draft capacity market rules for approval.

DIVISION V

Financial penalties

Article 85. 1. A financial penalty shall be imposed on anyone:

- 1) who fails to perform the obligation referred to in Article 11;
- 2) who provides inaccurate or incomplete data or information in the certification;
- 3) whose conduct in the certification or in the auction violates the law or capacity market rules;
- 4) who fails to provide the ERO President with information or statements referred to in Article 71(5) although being liable to do so or exercises the right referred to in Article 70(3) without complying with the requirements specified therein;
- 5) who fails to timely provide the documents or information referred to in Article 5.

2. A financial penalty shall be imposed on the operator if:

- 1) the certification is not carried out within the time limit specified in Article 3(2) to (4);
- 2) the certification is carried out in violation of the law or capacity market rules;
- 3) the preliminary auction is not arranged for within the time limit referred to in Article 4(2);
- 4) the preliminary auction date is not announced in accordance with Article 4(4);
- 5) the preliminary auction results are not announced within the time limit referred to in Article 9(8);
- 6) the prices referred to in Article 9(9) are disclosed in an unauthorized manner;
- 7) physical units or capacity market units notified for certification purposes are treated unequally without valid reasons;
- 8) the information referred to in Articles 10, 14, 27 or 28 is not timely provided;
- 9) an entry of a physical unit in the register is refused without valid reasons;
- 10) issue of the certificate referred to in Article 23 to the capacity provider is refused without valid reasons;
- 11) the dates of the main auction and additional auctions are not announced within the time limit referred to in Article 29(2);
- 12) the main auction or the additional auction is not arranged for within the time limit

- referred to in Article 29(2) for reasons attributable to the operator;
- 13) the auction is carried out in violation of the law or capacity market rules;
 - 14) a capacity market unit is not allowed to participate in the capacity auction without valid reasons;
 - 15) the information referred to in Article 38(2) is not timely provided;
 - 16) the rules of announcing the stress period referred to in Article 57(9) are violated.

3. A financial penalty shall be imposed on the distribution system operator if:

- 1) it refuses to cooperate with the operator without valid reasons or the time limits are not observed in the cases referred to in Article 3(5);
- 2) the data referred to in Article 58(5) or the information referred to in Article 75(6) are not timely provided.

4. The penalty referred to in paragraphs 1 to 3 shall be imposed by the ERO President.

5. The amount of the financial penalty referred to in paragraphs 1 to 3 may not exceed 5% of the revenue of the penalized entrepreneur earned in the previous fiscal year and if the financial penalty is related to the activity conducted on the basis of a licence, the amount of the penalty may not exceed 15% of the revenue of the penalized entrepreneur earned on the license-based activity in the previous fiscal year.

6. The financial penalty shall constitute the state budget income.

7. In determining the amount of the financial penalty, the ERO President shall take into account the type of infringement and its impact on the capacity market, the consequences of the infringement and the entrepreneur's financial capabilities.

8. The ERO President may decide not to impose the financial penalty if the impact of the infringement on the capacity market and its consequences are negligible and the operator has ceased to violate the law or has performed the obligation.

9. The financial penalty referred to in paragraphs 1 to 3 shall be paid within 14 days after the decision of the ERO President to impose the financial penalty becomes final and non-appealable.

10. The financial penalty referred to in paragraphs 1 to 3 shall be recovered in accordance with the provisions on administrative enforcement proceedings.

DIVISION VI

Amending provisions

Article 86. The Energy Law of 10 April 1997 (Journal of Laws of 2017, items 220, 791, 1089, 1387 and 1566) shall be amended as follows:

- 1) in Article 11d(1)(6) a dot is replaced by a semicolon and the following subparagraph 7 is added:

“7) shall announce the stress period referred to in Article 2 subparagraph 26 of the Capacity Market Act of 8 December 2017 (Journal of Laws, item ...).”;

- 2) in Article 15b(4)(7) a dot is replaced by a semicolon and the following subparagraph 8 is added:

“8) an assessment of the functioning of the capacity market referred to in the Capacity Market Act of 8 December 2017.”;

- 3) Article 34 is amended to read as follows:

“Article 34. 1. An energy enterprise that has been granted a license shall pay an annual fee to the state budget, charged to its operating costs, hereinafter referred to as the “license fee”.

2 The amount of the license fee shall be the product of the revenues of the energy enterprise earned on the sale of goods or services in the scope of its activity covered by the license, earned in the year in which the obligation to pay the fee arises, and the relevant factor specified in the regulations issued under paragraph 6.

3 The license fee for each of the activities covered by the license may not be lower than PLN 1,000 and higher than PLN 2,500,000.

4 The obligation to pay the license fee shall arise on the last day of the calendar year in which the energy enterprise earned revenue higher than or equal to zero from each type of the activity covered by the license. A license fee form set out in the regulations issued under paragraph 6 shall be used for the license fee.

5 The ERO President may request the energy enterprise which has been granted the license to provide information on the license fee as regards the basis and correctness of its calculation.

6 The Council of Ministers shall determine, by way of a regulation:

- 1) the detailed scope of information on the license fee which may be requested by the ERO President and the manner of providing such information,
- 2) the manner in which the ERO President collects the license fee, including the payment deadline thereof,
- 3) license fee co-efficient for each licensed activity,
- 4) model license fee form,

taking into account the amount of revenues earned by energy enterprises on the

activity covered by the license, as well as the costs of regulation, and having regard to the efficiency and reliability of the process of calculating and collecting the license fee.

7. An energy enterprise generating electricity using renewable energy sources of the total capacity not exceeding 5 MW shall be exempt from the license fee in the scope of the energy generated by them in those sources.”;

4) in Article 45, after paragraph 1e, the following paragraph 1f shall be inserted:

“1f. The operating costs of energy enterprises involved in electricity transmission or distribution referred to in paragraph 1(1) shall include reasonable costs of performing the tasks specified in the Capacity Market Act of 8 December 2017 and the costs of introducing and collecting the capacity fee referred to therein.”;

5) Article 49a(1) is amended to read as follows:

“1. An energy enterprise involved in electricity generation is obliged to sell not less than 30% of electricity generated in a given year on the commodity exchanges within the meaning of the Commodities Exchanges Act of 26 October 2000 or in the market organized by the entity operating the regulated market in the Republic of Poland, subject to paragraph 2.”;

6) in Article 56:

a) in paragraph 1(49) a dot is replaced by a semicolon and the following subparagraph 50 is added:

“50) does not perform or improperly performs the obligation referred to in Article 34(5).”;

b) in paragraph 2h(9) a dot is replaced by a semicolon and the following paragraph 10 is inserted:

“10) subparagraph 50 shall range between PLN 500 and PLN 5,000.”;

c) paragraph 4 is amended to read as follows:

“4. The financial penalty shall be payable to the bank account of the relevant tax office, with the exception of paragraph 4a.”;

d) After paragraph 4 the following paragraph 4a is inserted:

“4a. The financial penalty referred to in paragraph 2h(10) shall be payable to the bank account of the Energy Regulatory Office.”.

Article 87. In the Environmental Protection Law of 27 April 2001 (Journal of Laws of

2017, item 519, as amended⁶), after Article 369, the following Article 369a is inserted:

“Article 369a. 1. The provisions of Article 367(1)(1), in respect of introducing substances or energy by an entity using the environment in violation of the conditions of the required permit or Article 368 shall not apply to capacity market units referred to in Article 2(12) of the Capacity Market Act of 8 December 2017 (Journal of Laws, item ...), working in the stress periods referred to in Article 2 subparagraph 26 thereof.

2. In respect of Article 367(1)(1) the provision of paragraph 1 shall not apply if, in the opinion of the provincial environmental protection inspector, the introduction of substances or energy into the environment by the entity using the environment in violation of the conditions of the required permit may cause a threat to human health or produce a risk of a significant direct negative impact on the environment.”

Article 88. The Act of 29 June 2007 on the rules for covering costs incurred by generators in connection with the early termination of long-term capacity and electricity sales agreements (Journal of Laws of 2017, item 569) shall be amended as follows:

1) in Article 54:

a) paragraph 1 is amended to read as follows:

“1. Funds accumulated by Zarządca Rozliczeń S.A. as part of the activities referred to in Article 49, may be invested in:

- 1) treasury securities,
- 2) bonds guaranteed by the State Treasury,
- 3) bank deposits and bank securities in the Polish currency, subject to paragraph 3.”,

b) paragraph 3 is amended to read as follows:

“3. In the case of the anticipated date of maturity of the investments referred to in paragraph 2, which is longer than 6 months, Zarządca Rozliczeń S.A. shall, with the consent of the general meeting, invest funds in the investment certificates of the investment fund managed by the investment fund company in which the State Treasury or a state-owned legal person is the parent defined in the Act on Investment Funds and Alternative Investment Fund Management of 27 May 2004 (Journal of Laws of 2016, item 1896, as amended⁷).”;

⁶ Amendments to the consolidated text of the act were announced in the Journal of Laws of 2017, items 785, 898, 1089, 1529, 1566, 1888, 1999 and 2056.

⁷ Amendments to the consolidated text of the act were announced in the Journal of Laws of 2016, items 1948 and 2260 and of 2017, items 724, 768, 791 and 1089.

2) in Article 56(2)(3) a dot is replaced by a semicolon and the following paragraph 4 is added:

“4) appointment of another entity making capacity market financial settlements under the Capacity Market Act of 8 December 2017 (Journal of Laws, item ...).”.

Article 89. The Renewable Energy Sources Act of 20 February 2015 (Journal of Laws of 2017, items 1148, 1213 and 1593) shall be amended as follows:

1) in Article 82(1) in the introduction to the list:

a) the words “Article 72 subparagraph 1” are replaced by the words “Article 72(1)(1)”,

b) the words “Article 72 subparagraph 2” are replaced by the words “Article 72(1)(2).”;

2) In Article 105:

a) paragraph 1 is repealed,

b) paragraph 2 is amended to read as follows:

“2. The renewable energy source settlements body referred to in Article 106 shall adjust the maturity date of the investments of funds accumulated on the renewable energy source fee account the time limit to pay the amounts to cover the negative balance referred to in Article 93(1)(4) and Article 93(2)(3).”;

3) in Article 169(1)(1) the words “paragraphs 1 to 19” are replaced by the words “paragraphs 1 to 18”;

4) in Article 170(4)(2) the words “subparagraphs 12, 18 and 19” are replaced by the words “subparagraphs 12 and 18”;

5) in Article 172 the words “Article 168 subparagraphs 1 to 19” are replaced by the words “Article 168 subparagraphs 1 to 18”.

DIVISION VII

Transitional, adaptation and final provisions

Article 90. 1. The first main auction shall be carried out in the third year preceding the delivery period.

2. The first additional auction shall be carried out in the year preceding the year in which the delivery period for the first main auction falls.

3. 2021 shall be the delivery period for the first main auction.

Article 91. 1. The second main auction shall be carried out in the fourth year

preceding the delivery period.

2 The second additional auction shall be carried out in the year preceding the year in which the delivery period for the second main auction falls.

3 2022 shall be the delivery period for the second main auction.

Article 92. For the delivery periods falling between 2021 and 2023 capacities located in the electricity systems of EU member states that are directly connected to the system are involved in the capacity market only through participation in additional auctions.

Article 93. 1. The operator shall develop and submit for the first time to the ERO President, for approval, draft capacity market rules referred to in Article 83, by 28 February 2018.

2. The ERO President shall issue a decision on the approval of the capacity market rules referred to in Article 83 by 30 March 2018.

Article 94. 1. The first general certification shall commence on 3 April 2018 and shall end on 29 May 2018. Entries in the register obtained in the first general certification shall confer the right to participation in the certification referred to in paragraph 2.

2. Certifications for the main auctions falling in the delivery period between 2021 and 2023 shall be carried out jointly.

3. The operator shall forward proposals for the parameters for the three main auctions carried out in 2018 to the minister competent for energy matters and to the ERO President by 20 June 2018.

4. The main auction parameters and the demand for power may be jointly determined for individual delivery periods referred to in paragraph 2, in the regulations issued under Article 34(1).

5. The forecast demand for power for the delivery period attributable to 2022 and 2023 shall be determined taking into account the results of the first and the second main auction, respectively.

6. In respect of the main auctions for the delivery periods referred to in paragraph 2 the availability correction co-efficient for demand side response capacity market units shall be 1.

7. In the case referred to in paragraph 4 the minister competent for energy matters shall lay down the implementing regulations by 22 August 2018.

8. The certification for the main auction for delivery periods between 2021 and 2023 shall commence on 5 September 2018 and shall end on 31 October 2018.

9. The main auctions for the delivery periods in:

- 1) 2021 shall be carried out on 15 November 2018;
- 2) 2022 shall be carried out on 5 December 2018;
- 3) 2023 shall be carried out on 21 December 2018.

Article 95. A generating capacity market unit consisting of an existing physical generating unit which commenced to generate electricity after 1 July 2017, in respect of which meeting of the parameters referred to in Article 32(1)(4) has been demonstrated, shall, in the first main auction, have the right to enjoy the status of a price-maker and to conclude a capacity agreement for a term not longer than 5 or 15 delivery periods or for a delivery period longer by two years than the maximum period referred to in Article 25(4)(1) or (2) if the unit meets the conditions referred to in Article 25(5).

Article 96. 1. For the purposes of the certification for the first main auction, the period in which the investment costs referred to in Article 32(2) are incurred shall cover the period commencing on 1 January 2014.

2. For the purposes of the certification for the second main auction, the period in which the investment costs referred to in Article 32(2) are incurred shall cover the period commencing on 1 January 2017.

Article 97. 1. The operator shall establish a register:

- 1) in respect of the functionalities that make it possible to carry out the general certification – by 28 February 2018;
 - 2) in respect of the functionalities that make it possible to carry out a certification for the capacity auction – by 31 July 2018;
 - 3) in respect of the functionalities that make it possible to organize the secondary market – by 31 December 2019;
 - 4) in other cases – by 30 June 2020.
2. The operator shall establish a dedicated ICT system referred to in Article 4(3) in respect of:
- 1) the functionalities that make it possible to carry out the main auction mains – by 31 October 2018;
 - 2) other functionalities – by 31 December 2019.
3. The operator shall notify the ERO President and the minister competent for energy matters of the establishment of the register and the dedicated ICT system referred to in Article 4(3), promptly after expiry of the periods referred to in paragraphs 1 and 2.

Article 98. The ERO President shall announce the list referred to in Article 16(3) no later than 2 weeks prior to the commencement of the first general certification.

Article 99. 1. The capacity fee shall be charged as of 1 October 2020.

2. The ERO President shall calculate the capacity fee rates for the period commencing on 1 October 2020 and ending on 31 December 2021 on a *pro rata* basis and shall ensure that the costs under capacity agreements concluded for the delivery year 2021 are transferred.

Article 100. An energy enterprise involved in electricity generation shall perform the obligation referred to in Article 49a(1) of act amended in Article 86, as amended hereby, for 2018, in respect of electricity generated from 1 January 2018.

Article 101. The existing implementing regulations issued under Article 53(4) of the act amended in Article 89 shall remain in force until the date of entry into force of the implementing regulations issued under Article 53(4) of the act amended in Article 89, as amended hereby, but no longer than 24 months following the date of entry into force of this Act and may be amended during this period.

Article 102. The existing implementing regulations issued under Article 34(3) of the act amended in Article 86 shall remain in force until the date of entry into force of the implementing regulations issued under Article 34(6) of the act amended in Article 86, as amended hereby, but no longer than 12 months following the date of entry into force of this Act.

Article 103. 1. The Council of Ministers shall, no later than in 2024, on the basis of balance sheet analyses of the national power system and assessment of the energy market development level, assess the functioning of the capacity market and provide the Sejm of the Republic of Poland with information on the consequences of application thereof together with proposals for changes in or elimination of the capacity market.

2. If the capacity market is eliminated or the capacity auction is no longer organized in the case referred to in paragraph 1, the concluded capacity agreements shall remain in effect and may be enforced.

Article 104. Until the date of a decision of the European Commission on the compatibility of state aid provided for in:

1) Article 60(1) with the internal market or a decision that the measure does not constitute state aid, the capacity agreement shall not be enforced;

- 2) Article 70(3) with the internal market or a decision that the measure does not constitute state aid, the provisions of Article 70(3) and Articles 71 to 73 shall not apply.

Article 105. 1. The limit of expenditure from the state budget allocated for the performance of the duties of the ERO President under the Act per year shall be as follows:

- 1) 2018 – PLN 391,926;
- 2) 2019 – PLN 351,926;
- 3) 2020 – PLN 351,926;
- 4) 2021 – PLN 351,926;
- 5) 2022 – PLN 351,926;
- 6) 2023 – PLN 351,926;
- 7) 2024 – PLN 351,926;
- 8) 2025 – PLN 351,926;
- 9) 2026 – PLN 351,926;
- 10) 2027 – PLN 351,926.

2. The ERO President shall monitor the use of the limit of the expenditure referred to in paragraph 1 and shall implement the corrective mechanisms referred to in paragraph 3.

3. If the amount of expenditure after the first semester of a given budget year exceeds 65% of the expenditure limit provided for a given year, the funds body shall reduce the amount of funds to be incurred in the second semester by the amount being the difference between the amount of the limit and the amount of the expenditure overrun.

4. If the amount of expenditure in individual months is consistent with the financial plan, the provision of paragraph 3 shall not apply.

Article 106. 1. The limit of expenditure from the state budget allocated for the performance of the duties by the minister competent for energy matters under the Act shall be as follows:

- 1) 2018 – PLN 427,427;
- 2) 2019 – PLN 387,427;
- 3) 2020 – PLN 387,427;
- 4) 2021 – PLN 387,427;
- 5) 2022 – PLN 387,427;
- 6) 2023 – PLN 387,427;
- 7) 2024 – PLN 387,427;

- 8) 2025 – PLN 387,427;
- 9) 2026 – PLN 387,427;
- 10) 2027 – PLN 387,427.

2. The minister competent for energy matters shall monitor the use of the limit of the expenditure referred to in paragraph 1 and shall implement the corrective mechanisms referred to in paragraph 3.

3. If the amount of expenditure after the first semester of a given budget year exceeds 65% of the expenditure limit provided for a given year, the funds body shall reduce the amount of funds to be incurred in the second semester by the amount being the difference between the amount of the limit and the amount of the expenditure overrun.

4. The provision of paragraph 3 shall not apply if the amount of expenditure in individual months is consistent with the financial plan.

Article 107. This Act shall enter into force after 14 days of being announced.

SEJM MARSHAL
/ – / Marek Kuchciński