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Final wording of the Act agreed upon after considering amendments of the Senate

A C T

of 8 December 2017

on the Capacity Market¹⁾

SECTION I

General provisions

Chapter 1

Subject of the Act

Article 1. 1. The Act determines organisation of the capacity market and the principles pursuant to which the service of maintaining readiness to deliver electrical capacity to the electric power system, as well as of delivering that capacity to the system during system stress events is rendered.

2. The present Act aims is to assure mid- and long-term security of the supply of electricity to final customers in a way that is cost-effective, non-discriminating and in compliance with the principles of sustainable development.

Chapter 2

Definitions

Article 2. 1. Whenever used in this Act, the terms presented below shall have the following meaning:

- 1) additional auction – a capacity auction with the delivery period being a quarter of a calendar year;
- 2) main auction – a capacity auction with the delivery period being a calendar year;
- 3) capacity auction – an auction in which a capacity provider offers to the operator a

¹⁾ This Act amends the following: the Act of 10 April 1997 – Energy Law, the Act of 27 April 2001 – Environment Protection Law, the Act of 29 June 2007 on the Coverage of Costs Incurred by Producers in Connection with Early Termination of Long-Term Contracts for the Sale of Power and Electricity, and the Act of 20 February 2015 on Renewable Energy Sources.

- capacity obligation for a delivery period;
- 4) capacity provider – an owner of a capacity market unit, being an owner of physical units constituting the capacity market unit or being an entity authorised by the owners of such physical units to dispatch them in scope of capacity market processes;
 - 5) physical unit – a separate set of technical apparatus with metering points assigned to them in the system;
 - 6) physical interconnector unit – a technical asset connecting the system with an electricity transmission system of another Member State of the European Union, capable of delivering capacity to the system;
 - 7) physical demand side response unit – a physical unit providing capacity to the system by time-limited reduction of power taken off the electricity grid as a result of using:
 - a) controllable load, or
 - b) a generating unit not being an independent physical generating unit, as referred to in Article 3(43) of the Act of 10 April 1997 – Energy Law (Journal of Laws of 2017, items 220, 791 and 1089, 1387 and 1566) or an electricity storage, together with the equipment and installations of the final customer;
 - 8) physical generating unit – a physical unit being a generating unit, as referred to in Article 3(43) of the Act of 10 April 1997 – Energy Law, or an electricity storage;
 - 9) existing physical generating unit – a physical generating unit connected to the system and commissioned prior to the commencement of general certification the unit shall be submitted to;
 - 10) planned physical generating unit – a physical generating unit other than specified in paragraph 9 which is planned to be connected to the system and commissioned prior to the commencement of the delivery period that the main auction into which the said unit will be entered will be concerned with;
 - 11) planned demand side response unit – one or more physical demand side response units for which not all data required for registration or for issuing a certificate with respect to the physical demand side response unit is known;
 - 12) capacity market unit – a generating capacity market unit and a demand side response capacity market unit;
 - 13) generating capacity market unit – a physical generating unit or a group of such units or a cross-border physical generating unit or a group of such units that has

- obtained a certificate for the capacity auction;
- 14) demand side response capacity market unit – a physical demand side response unit or a group of such units, a physical cross-border demand side response unit or a group of such units that has obtained a certificate for the capacity auction;
 - 15) physical cross-border unit – a physical cross-border generating unit and a physical cross-border demand side response unit;
 - 16) physical cross-border generating unit – a physical generating unit located in a Member State of the European Union whose electric power system is directly interconnected with the system;
 - 17) physical cross-border demand side response unit – a physical demand side response unit located in a Member State of the European Union whose electric power system directly is interconnected directly with the system;
 - 17a) generating unit – the generating unit referred to in Article 3(43) of the Act of 10 April 1997 – Energy Law, or another separate set of equipment used for generation of electricity;
 - 17b) emission limit – emission of no more than 550 g of carbon dioxide from fossil fuels per kWh of electricity generated;
 - 18) electricity storage – an energy storage referred to in Article 3(10k) of the Act of 10 April 1997 – Energy Law;
 - 19) gross attainable capacity of a physical generating unit – maximum active power confirmed, as by tests, at which the physical generating unit may operate at nominal parameters over a period of at least 4 consecutive hours, without an adverse impact on the lifetime of such a unit;
 - 20) net attainable capacity of a physical generating unit – gross attainable capacity of a physical generating unit, less the capacity consumed by process-related devices and systems of the unit that are necessary for the generation of electricity or of electricity and heat;
 - 21) attainable capacity of a physical demand side response unit – the value of the maximum time-limited reduction of power taken off the electricity grid by the physical demand side response unit, measured at all metering and settlement points of this unit, at grid interface points;
 - 22) net attainable capacity of a capacity market unit – the sum of net attainable capacities of all physical generating units or the sum of attainable capacities of all physical demand side response units comprising the capacity market unit;

- 23) capacity obligation – an obligation of the capacity provider to maintain, during the delivery period, readiness to deliver the specific electrical capacity to the system via a capacity market unit, and to deliver the specific electrical capacity to the system during system stress events;
- 24) final customer – the final electricity customer, as referred to in Article 3(13a) of the Act of 10 April 1997 – Energy Law;
- 25) delivery period – the calendar year or quarter for which an additional auction is held;
- 26) system stress event – a full hour in which the surplus capacity available to the operator under the daily planning processes of the system’s operation is lower than the required value defined according to Article 9g(4)(9) of the Act of 10 April 1997 – Energy Law;
- 27) operator – an electricity transmission system operator or an interconnected electric power system operator, as referred to in Article 3(24) or (28) of the Act of 10 April 1997 – Energy Law;
- 28) distribution system operator – an electricity distribution system operator, as referred to in Article 3(25) of the Act of 10 April 1997 – Energy Law;
- 29) metering point – a location within the grid, a piece of equipment or an installation where measurement of the flow of electricity is performed, as defined in the grid connection agreement or in the electricity transmission or distribution services agreement;
- 29a) commencement of commercial production – the date of commencement of operation of the generating unit, in accordance with its intended use, after reaching the condition in which the operation of this unit is compliant with the law and technically possible;
- 30) distribution grid – the electricity distribution grid, as referred to in Article 3(11b) of the Act of 10 April 1997 – Energy Law;
- 31) transmission grid – the electricity transmission grid, as referred to in Article 3(11a) of the Act of 10 April 1997 – Energy Law;
- 32) system – the electric power system referred to in Article 3(23) of the Act of 10 April 1997 – Energy Law;
- 33) tariff – a tariff referred to in Article 3(17) of the Act of 10 April 1997 – Energy Law;
- 34) capacity market participant – an operator, a distribution system operator,

a settlement manager, a physical unit owner or an entity they duly authorise, as well as a capacity provider.

2. Whenever the Act refers to net attainable capacity or gross attainable capacity of a physical unit, it shall also be understood as attainable capacity of a physical demand side response unit.

SECTION II

Organisation of the capacity market

Chapter 1

General provisions

Article 3. 1. The operator shall conduct:

- 1) general certification – in order to acquire information about the physical units and to enter these into the capacity market register, hereinafter referred to as the “register”;
- 2) certification for the main auction – in order to establish capacity market units and to enable these to participate in the main auction;
- 3) certification for additional auctions – in order to establish capacity market units and to enable these to participate in one or more additional auctions;

2. General certification shall commence no later than in the 2nd week of each year and shall end no later than in the 11th week of that year.

3. Certification for the main auction shall commence 14 weeks prior to the main auction, and shall end no later than in the 4th week prior to the main auction.

4. Certification for additional auctions shall commence no later than 16 weeks prior to the additional auctions, and shall end no later than in the 4th week prior to the additional auctions.

5. In the course of the certification process, the distribution system operator cooperates with the operator, in the manner and in accordance with the deadlines set forth in the capacity market regulations referred to in Article 83. The operator of the distribution system whose distribution grid is not directly interconnected with the transmission grid, cooperates with the operator via the operator of the distribution system with whose grid he is interconnected, and who has a direct interconnection with the transmission grid.

6. The operator notifies the certification commencement and conclusion dates referred to in paragraph 1 on its website.

Article 3a. 1. The emission limit shall be deemed met by a capacity market unit if none of the generating units included in the physical units forming a given capacity market unit exceeded the emission limit in a given delivery year.

2. Unit carbon dioxide emission rate in relation to the generating unit is determined in accordance with the following formula:

$$EJ = \frac{0,0036 \cdot (1 - t_{CO_2}) \cdot \sum_{p=1}^{p=n} U_p \cdot WE_p}{n_{proj}}$$

where:

- EJ – means the unit carbon dioxide emission rate from a given generating unit, expressed in gCO₂/kWh,
- t_{CO₂} – means the share of carbon dioxide emissions that has been transferred from a generating unit and next used in the manner referred to in Article 49(1)(a) or (b) of Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No. 601/2012 (Official Journal of EU L 334 of 31.12.2018, p. 1, as amended) in total emission from this unit, expressed in %,
- p – means fuel,
- n – means the number of fuels used in a given generating unit,
- U_p – means the energy share of a given fuel in the entire fuel supplied to a given generating unit during the entire calendar year, expressed in %,
- WE_p – means the carbon dioxide emission rate for a given fuel, determined as for the emission reporting purposes specified in Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 601/2012, expressed in kgCO₂/TJ,
- n_{proj} – means the efficiency of electricity generation in a given generating unit under design conditions, calculated as the quotient of net electric capacity and total fuel consumption under design conditions at net available capacity, taking into account the results of operational, guarantee or post-

refurbishment measurements, whichever is the latest

3. In the case of electricity storages being part of physical units forming a given capacity market unit, for the purpose of verification of compliance with the emission limit, it is assumed that the unit carbon dioxide emission rate EJ in the case of electricity storages:

- 1) not directly connected to the generating unit and supplied only from the grid – is equal to zero;
- 2) directly connected to one or more generating units – is equal to the highest rate of the unit carbon dioxide emission rates determined for directly connected generating units, respectively.

Article 4. 1. The operator shall conduct auctions of the rights to offer the capacity obligation in capacity auctions, targeted at capacity market units comprising physical cross-border units, hereinafter referred to as “pre-auctions”.

2. The pre-auctions shall be conducted after entry into force of the regulation referred to in Article 34(1), but in no case later than 2 weeks prior to certification for the main auction.

3. The pre-auction, the main auction and the additional auctions are conducted electronically, with the use of a dedicated ICT system.

4. The operator informs about the date of the pre-auction, the main auction and the additional auctions on its website.

5. The offers submitted and representations made during the pre-auction, the main auction and the additional auctions are affixed, by the capacity supplier, with a qualified electronic signature.

Article 5. The President of the Energy Regulation Office, hereinafter referred to as the “President of ERO”, may demand the capacity market participants to produce documents or information of significance for the assessment of the correct course of the certification process or of the capacity auctions.

Chapter 2

Participation of cross-border capacities in the capacity market

Article 6. 1. The operator shall enable capacity located in the electrical power systems of a Member State of the European Union whose electric power system is directly interconnected with the system, through:

- 1) enabling capacity market units comprising physical interconnector units to participate in the capacity auctions, or
- 2) organising pre-auctions separately for the individual zones referred to in paragraph 6, and by enabling capacity market units comprising physical cross-border units to participate in the capacity auctions.

2. One of the solutions specified in paragraph 1 shall be applied with regard to each of the zones referred to in paragraph 6, pursuant to an agreement concluded between the operator and the operator of the transmission system directly interconnected with the system.

3. In the case referred to in paragraph 1(1), the operator shall conclude, with the operator of the transmission system directly interconnected with the system, an agreement laying down, in particular, the principles for:

- 1) determining and agreeing upon capacities offered in the capacity auction by a capacity market unit comprising physical interconnector units;
- 2) participating in the capacity auction, including for submitting bids in the capacity auction and for establishment of the capacity obligation of the unit referred to in item 1;
- 3) performing and settling the performance of the capacity obligation by the unit referred to in item 1.

4. In the case referred to in paragraph 1(2), the operator shall conclude, with the operator of the transmission system directly interconnected with the system, an agreement laying down, in particular, the principles for:

- 1) providing information required to confirm the existence of the physical cross-border unit and its technical parameters;
- 2) providing data enabling to verify and settle the performance of the capacity obligation by capacity market units comprising physical cross-border units;
- 3) announcing and conducting test system stress events with regard to capacity market units comprising physical cross-border units.

5. The solution referred to in paragraph 1(2) shall be applied under reserve that the operator concludes, with the operator of a transmission system relevant for a given zone, the agreement referred to in paragraph 4, and in the case of the zone referred to in paragraph 6(1) - under reserve that agreements are concluded with all applicable operators of power systems directly interconnected with the system.

6. The zones in which physical cross-border units participating in the capacity

market are located and with which the system is directly interconnected by physical interconnector units are:

- 1) the synchronous profile zone – comprising the following:
 - a) a part of the transmission system of the Federal German Republic, constituting a scheduling area directly interconnected with the system in the meaning of Article 3(91) of the Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ L 220 of 25.08.2017, page. 1),
 - b) transmission system of the Czech Republic,
 - b) transmission system of the Slovak Republic,
- 2) Lithuania – comprising the transmission system of the Republic of Lithuania;
- 3) Sweden – comprising the transmission system of the Kingdom of Sweden.

Article 7. 1. The operator draws up information on the maximum forecasted capacity obligations volumes for individual zones specified in Article 6(6) on the basis of the mid-term adequacy assessment drawn up regularly in accordance with Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (Official Journal of EU L 158 of 14.06.2019, p. 54), hereinafter referred to as “Regulation 2019/943”. 2. Pursuant to the parameter referred to in Article 32(1)(7):

- 1) the maximum value of the capacity bid submitted by a capacity market unit comprising physical interconnector units is determined - in the case of the solution specified in Article 6(1)(1), or
- 2) the selection of bids in the preliminary method is performed, as referred to in Article 9(4) – in the case of the solution specified in Article 6(1)(2).

Article 8. 1. In order to admit cross-border capacities to participate in the capacity market in the manner referred to in Article 6(1)(1), the operator shall agree, with the relevant operator of the transmission system directly interconnected with the system, upon the value of the capacity offered in the capacity auction by the capacity market unit comprising physical interconnector units, being the lower of the following values:

- 1) the parameter referred to in Article 32(1)(7);
- 2) determined by the applicable operator of the transmission system directly interconnected with the system.

2. In the case of the zone referred to in Article 6(6)(1), when the sum of the capacity

values determined in accordance with paragraph 1 by the operators of the individual transmission systems comprising the zone referred to in Article 6(6)(1) is greater than the parameter referred to in Article 32(1)(7), the values agreed upon for the individual systems shall be attained by their proportional reduction, to ensure that their sum corresponds to the value of the parameter in question.

Article 9. 1. Following the establishment of collateral for the benefit of the operator, the participant of a pre-auction shall submit a capacity obligation bid for the capacity market.

2. The bid referred to in paragraph 1 shall contain the following:

- 1) price per 1 kW expressed in PLN;
- 2) value of the capacity offered in MW – not lower than 2 MW;
- 3) unit rate of carbon dioxide emissions;
- 4) information whether the pre-auction participant agrees to accept an offer for part of the capacity offered.

3. The bidder may submit, in one pre-auction, more than one bid, under reserve that the sum of the capacities offered in the bids submitted must not be greater than the permissible value determined by the collateral established. Where the value of the bids submitted by a given bidder exceeds the value determined by the collateral established, the valid bids of a given operator shall be selected by applying the provisions of paragraphs 4 and 5 accordingly.

4. After expiry of the bid submission deadline, the bids submitted shall be arranged from the cheapest to the most expensive one, and in the case of bids with an equal price - from the bid with the lowest carbon dioxide emissions unit rate. Then, starting with the cheapest bid, those bids are accepted whose total capacity is not greater than the value of the parameter referred to in Article 32(1)(7).

5. If the last bid whose selection, along with the bids referred to in paragraph 4, would result in the total capacity being greater than the value of the parameter referred to in Article 32(1)(7), and the bid in question is:

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

6. In the case referred to in paragraph 5(2), the next bid shall be considered, with

the provision of paragraph 4 applied accordingly, under reserve that if this bid is indivisible as well, no subsequent bids shall be considered.

7. The pre-auction shall conclude by entering the bids selected to the capacity market register. An entry to the capacity market register shall authorise the participant of a pre-auction to submit an application for issuing a certificate authorising them to participate in the upcoming main auction, in the additional auctions or in the secondary market, in accordance with the provisions of Article 17(3) and (4).

8. The operator shall inform the participant of the pre-auction, within 7 days from the conclusion thereof, of the acceptance or rejection of the bid they have submitted.

9. The operator shall publish the results of the pre-auction within 5 business days from the date of completion of the capacity auction which the pre-auction relates to.

10. The President of ERO may require the operator to present the prices of the bids submitted in the pre-auction, with the provisions on the protection of confidential information and other legally protected information applied.

11. The rights under the bid that has been accepted in a pre-auction must not be transferred to a third party.

Article 10. 1. The operator shall submit, to the minister relevant for energy and to the President of ERO, within 21 days from the completion of the pre-auction, information on the course of such an auction. The said information shall contain the following:

- 1) a list of bids, along with the name of the participants of pre-auctions, the capacities offered and information on the acceptance of the individual bids;
- 2) information about rejected bids, along with a relevant justification.

2. Within 14 days from the date of conclusion of or amendment to the agreement referred to in Article 6(3) or (4), the operator shall provide the President of ERO and the minister relevant for energy with information on its conclusion or amendment..

Chapter 3

General certification

Article 11. The owner of an existing physical generating unit whose attainable gross capacity is not lower than 2 MW shall be required to enter the physical generating unit in each general certification procedure.

Article 12. 1. In the course of general certification, the owner of the physical unit

or of the demand side response unit, or an entity authorised thereby shall submit, to the operator, an application for entering such a unit to the register, with the said application hereinafter referred to as “registration application”.

2. The registration application shall contain the following:

- 1) identification details of the physical unit and of its owner;
- 2) identification details of the entity authorised to act for and on behalf of the owner of the physical unit, if such an entity has been specified, and documents supporting the authorisation to act for and on behalf of such an owner;
- 3) information about 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 physical generating unit – the operational plan for the period of the next 5 calendar years, commencing in the year following the year of general certification, including the planned downtime of the unit during that period of time;
- 6) an application of a given physical unit for the participation in the upcoming main auction or in one or a higher number of additional auctions, along with the identification of quarters, or a representation on the lack of participation in the upcoming main auction or in the additional auctions;
- 7) in the case of a planned physical generating unit – the year of delivery that the main auction into which the said unit will be entered will be concerned with;
- 8) other information set forth in the capacity market regulations referred to in Article 83.

3. When entering a physical unit to participate in the general certification procedure in the year following the year in which that unit has been entered into the register, the applying entity may submit a registration application that only supplements or amends information submitted for the purpose of the preceding general certification procedure.

4. If the information or data included in the registration application of the planned physical generating unit:

- 1) has changed – the applicant is obliged to report its supplementation or change in the next general certification;

2) referred to in paragraph 2(1)-(4) has changed – the applicant may report its supplementation or change after obtaining an entry in the register, and before issuing a certificate confirming the creation of a capacity market unit comprising a given planned physical generating unit.

5. Where a registration application for a planned demand side response unit is submitted, the application shall contain the following:

- 1) information referred to in paragraph 2(6) and (8);
- 2) details of the entity that will act in the capacity of the capacity provider;
- 3) total planned attainable capacity of all physical demand side response units that will comprise a given planned demand side response unit;
- 4) scheme of operations drawn up in observance of the guidelines set forth in the capacity market regulations referred to in Article 83.

6. An entry of the planned demand side response unit into the register shall entitle that unit to participate in the upcoming certification procedure for the main auction and in the upcoming certification procedure for the additional auctions.

7. All information referred to in paragraph 2 pertaining to physical demand side response units comprising the planned demand side response unit shall be determined prior to the performance of the demand side response test referred to in Article 53(1).

Article 13. 1. Where the registration application fails to meet the requirements set forth in Article 12(2) or (5), the operator shall call upon the applicant to eliminate the formal defects of or gaps in the application, within the deadline set forth in the capacity market regulations referred to in Article 83.

2. Where the formal defects of or gaps in the registration application are not eliminated in due time, the operator shall refuse to enter the physical unit to the register and shall immediately communicate that fact to the applicant.

Article 14. 1. The operator shall submit, to the minister relevant for energy and to the President of ERO, within 14 days from completion of the general certification procedure, information on the course of such a procedure. The information shall comprise, in particular, the following elements:

- 1) the sum of net attainable capacities of all physical units reported in general certification, broken down by: planned and existing physical generating units, physical demand side response units, planned demand side response units, physical generating units being electricity storages, and physical cross-border units;
- 2) the sum of net attainable capacities of the physical units whose participation in the main auction has been declared, broken down by: planned and existing physical generating units, physical demand side response units, physical generating units being electricity storages, and physical cross-border units;
- 3) the list of entities called upon to supplement their applications, in accordance with Article 13(1);

4) the list of entities who have been refused an entry to the register pursuant to Article 13(2);

2. The operator shall submit, to the President of ERO and the minister relevant for energy, within 28 days from completion of the general certification procedure, the proposed values of parameters referred to in Article 31(1), (2), (4) and (5), as well as in Article 32(1)(2)-(7) and in Article 32(3).

Chapter 4

Certification for the main auction and for additional auctions

Article 15. 1. In the course of the certification procedure for the main auction or for the additional auction, the owner of the physical unit, the physical cross-border unit or of the planned demand side response unit, or an entity authorised thereby to dispose of that unit on the capacity market, shall submit, to the operator, an application for:

- 1) establishing a capacity market unit and allowing it to participate in the main auction or in the additional auctions, or for allowing it to participate in the secondary market, or
- 2) admitting the capacity market unit established in the certification for the main auction to participate in the additional auctions for the same year of delivery – hereinafter referred to as the “certification application”.

2. The certification application may be concerned with physical units, physical cross-border units or with planned demand side response units entered in the register, with their entry valid as at the date on which certification for the main auction or for the additional auctions commences.

3. The capacity provider must not submit an application for main auction certification of a capacity market unit with regard to which it has already concluded a multiannual capacity agreement covering the delivery period the certification in question is concerned with.

4. A capacity market unit covered by the capacity obligation for a given year of delivery, or a physical unit comprising such a capacity market unit must not be submitted for certification for additional auctions concerned with that same year.

5. A capacity market unit comprising physical units that generate, annually, more than 30% of electricity by relying on co-generation processes, may participate both in the main auction and in an additional auction for the same year of delivery, under reserve that the sum of the capacity obligations offered by such unit must not be greater than the

product of the net attainable capacity and the de-rating factor relevant for such unit.

6. The capacity provider may not submit an application for certification with respect to a capacity market unit which, in the delivery year for which the certification is carried out, will not meet the emission limit, taking into account paragraph 7.

7. In the case of the capacity market unit referred to in paragraph 6, comprising only of generating units that commenced commercial production before 4 July 2019, the capacity provider may submit an application for certification only with respect to creating a capacity market unit and admitting it to participate in the secondary market.

8. An application for certification may not be submitted by a capacity provider in relation to which the circumstances apply as referred to in Article 2(18)(a),(b),(c) or (e) of Commission Regulation (EU) No. 651/2014 of June 17, 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Official Journal of EU L 187 of June 26, 2014, p. 1, as amended).

Article 16. 1. The capacity provider may submit an application for the establishment of a capacity market unit comprising:

- 1) a physical generating unit with the net attainable capacity of not less than 2 MW;
- 2) a physical demand side response unit with the attainable demand side response capacity of not less than 2 MW;
- 3) a group of physical generating units whose combined net attainable capacity is not lower than 2 MW, but is not greater than 50 MW, and under reserve that the maximum net attainable capacity of a single physical unit comprising such group of units is not greater than 10 MW;
- 4) a group of physical demand side response units whose combined attainable demand side response capacity is not lower than 2 MW, but is not greater than 50 MW;
- 5) a physical cross-border generating unit with the net attainable capacity of not less than 2 MW;
- 6) a physical cross-border demand side response unit with the attainable demand side response capacity of not less than 2 MW;
- 7) a group of physical cross-border generating units whose combined net attainable capacity is not lower than 2 MW, but is not greater than 50 MW, and under reserve that the maximum net attainable capacity of a single physical unit comprising such a group of units is not greater than 10 MW;
- 8) a group of physical cross-border demand side response units whose combined attainable demand side response capacity is not lower than 2 MW, but is not greater

than 50 MW;

- 9) a single planned demand side response unit with the attainable demand side response capacity of not less than 2 MW;
- 10) a group of planned demand side response units whose combined attainable demand side response capacity is not lower than 2 MW, but is not greater than 50 MW;
- 11) a group comprising at least one physical demand side response unit and at least one planned demand side response unit whose combined attainable demand side response capacity is not lower than 2 MW, but is not greater than 50 MW.

2. A capacity market unit for a given delivery year must not comprise a physical unit:

- 1) with regard to which a generator of electricity relying on renewable energy sources will have the right, in a given delivery year, to cover the negative balance referred to in Article 93(2)(3) of the Act of 20 February 2015 on Renewable Energy Sources, other than:
 - a) a multi-fuel fired installation in the meaning of Article 2(15) of the Act of 20 February 2015 on Renewable Energy Sources, or
 - b) a hybrid system in the meaning of Article 2(34) of the Act of 20 February 2015 on Renewable Energy Sources;
- 2) with regard to which a generator of electricity relying on renewable energy sources will submit, with regard to a given delivery period, an application for issuing guarantees of origin in the meaning of the Act referred to in item 1, other than:
 - a) a multi-fuel fired installation in the meaning of Article 2(15) of the Act referred to in item 1, or
 - b) a hybrid system in the meaning of Article 2(34) of the referred to in item 1;
- 3) with regard to which a generator or recipient of electricity will be rendering, for the benefit of the operator, a service specified in the instruction referred to in Article 9g of the Act of 10 April 1997 - Energy Law, with the nature of such service and of the remuneration for such a service similar to the capacity obligation on the capacity market;
- 3a) for which the producers of electricity from renewable energy sources will be entitled in a given delivery year to cover the negative balance referred to in Article 40(1) (3) of the Act of 17 December 2020 on promoting electricity generation in offshore wind farms (Journal of Laws of 2021, item 234);
- 4) comprising a generating unit which, in the delivery year, will not meet the emission

limit and commenced commercial production not earlier than on 4 July 2019;

- 5) a cross-border unit with regard to which the capacity provider shall take advantage, in the delivery year, of the applicable system supporting the generation of electricity from renewable sources or from highly efficient co-generation sources.

3. The President of ERO shall publish, in the Public Information Bulletin (Biuletyn Informacji Publicznej), on its website, the list of services referred to in paragraphs 2(3) and shall update it immediately whenever the instruction referred to in Article 9g of the Act of 10 April 1997 - Energy Law, concerned with the said services, is amended.

4. In the course of certification for the capacity auctions, the operator shall establish capacity market units comprising physical interconnector units and shall enter these in the register.

Article 17. 1. Any given capacity market unit may be disposed of, during a given calendar year, by one capacity provider only.

2. A physical unit may comprise, during a given calendar year, a part of one capacity market unit only.

3. The participant of a pre-auction who, as a result of the pre-auction relevant for a given capacity market, has been entered into the capacity market register, may seek the establishment of a capacity market unit comprising one or more physical cross-border units in the place of each offer accepted.

4. The total value of the capacity obligation that the participant of the pre-auction intends to offer as a capacity provider is not lower than 2 MW and not greater than the value stemming from the accepted bid, and not greater than the sum of the products of attainable capacities of the individual physical cross-border units and the applicable de-rating factor.

5. The operator of the transmission power system with which the unit concerned interconnects the system is the sole capacity provider in relation to the capacity market unit comprising physical interconnector units.

Article 18. 1. The maximum value of the capacity obligation that may be offered on the capacity market in the certification application by a capacity market unit shall be determined with the de-rating factor specified for the individual technology groups, hereinafter referred to as the “de-rating factor”, taken into consideration.

2. The de-rating factor shall be set out on an annual basis, based on historic data from the previous 5 years and pertaining to the capacity provision characteristics, as well

as downtime rates and net attainable capacity reductions that are typical of the individual groups of technologies.

3. The values of the de-rating factor for the individual groups of technologies shall be set within the range of 0 and 1.

4. If a given capacity market unit comprises a group of physical units belonging to different capacity provision technology groups, the de-rating factor for such a capacity market unit shall be equal to the lowest of the indexes for the physical units comprising such a unit.

Article 19. 1. The application for certification of a generating capacity market unit shall contain the following:

- 1) in the case of the application for certification other than an application for the creation of a capacity market unit and its admission to participate only in the secondary market – the capacity obligation volume to be offered by the capacity provider for that unit in the capacity auction, not higher than the product of the net available capacity of the unit and the de-rating factor;
- 2) a certificate, issued by the operator or a distribution system operator relevant for the location, confirming fulfilment of the technical requirements, as specified in the capacity market regulations referred to in Article 83, required to perform the settlements in a correct manner with the use of all metering systems of the physical units comprising the capacity market unit;
- 3) copies of electricity generation licences of the physical units comprising the capacity market unit, if these are required pursuant to the Act of 10 April 1997 - Energy Law, or copies of licence promises;
- 4) net attainable capacity of each of the physical units during the delivery period;
- 5) information confirming ability of the individual physical units comprising the capacity market unit to deliver the net attainable capacity during the delivery period, over an uninterrupted period of at least 4 hours, including information on the technologies relied upon and on the manner in which the availability of a sufficient amount of fuel required to comply with the capacity obligation is ensured;
- 6) information specifying:
 - a) the pace at which the volume of electricity generated by the physical unit comprising the capacity market unit fluctuates;

- b) net electricity generation efficiency characteristics, and in the case of co-generation units referred to in Article 3(35) of the Act of 10 April 1997 – Energy Law, also the net electricity and heat generation efficiency characteristics and the net overall efficiency understood as the ratio between the net electricity and heat generation and the consumption of the chemical energy of fuels in the co-generation unit,
 - c) the technical electricity generation minimum at which the physical generating unit may operate over an uninterrupted period of at least 4 consecutive hours, without an adverse impact on the lifetime of such a unit, expresses in relation to the net attainable capacity,
 - d) per-unit rate of carbon dioxide, sulphur, nitrogen oxides and particulate matter emissions,
 - e) data, for the calendar year preceding the year in which the certification for the capacity auction takes place, related to the fixed and variable operating costs and the capital costs of the physical units comprising the capacity market unit, including the following:
 - per-unit variable costs, other than the costs of primary fuel and emission rights,
 - fixed operating costs,
 - fixed capital costs,
 - capital expenditures related to activities involving assets comprising the unit concerned;
- 7) information on existing and planned limitations concerning the physical unit's operating time, resulting from separate regulations;
 - 8) a representation stating that no circumstances referred to in Article 16(2) have occurred;
 - 9) a declaration on the planned compliance with the emission limit by the capacity market unit in the delivery year which the certification relates to or in the case referred to in Article 15(7), a declaration on the failure of compliance with this limit;
 - 10) declaration on the commencement of commercial production before 4 July 2019 by all generating units being a part of physical units forming a capacity market unit or on the commencement of commercial production by at least one generating unit being a part of physical units forming a capacity market unit on that date or later;

11) a declaration stating that the circumstances do not occur towards the capacity provider as referred to in Article 2(18)(a), (b), (c) or (e) of Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain types of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

2. The capacity provider may seek the establishment of a new generating capacity market unit, comprising only a single physical unit that was, on the date on which the general certification procedure commenced, a planned physical generating unit. In such a case, the certification application shall contain, in addition to the information referred to in paragraph 1, the following:

- 1) financial expenditures planned or spent, as well as the scope of work related to those expenditures;
- 2) where a capacity agreement for a period of delivery longer than 1 year is sought - an independent study confirming:
 - a) the financial expenditures referred to in item 1, and
 - b) the planned compliance, by the physical unit comprising the new generating capacity market unit, of the emissions-related requirement, in accordance with directive (EU) 2010/75 of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334 of 17.12.2010, page 17, as amended²⁾), or, as the case may be, 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 of 28.11.2015, page 1), and
 - ba) planned compliance with the emission limit by a new generating capacity market unit in each delivery year,
 - c) where the conclusion of the agreement is sought under Article 25(5) - the planned fulfilment, by the physical unit comprising the new generating capacity market unit, of the parameter referred to in Article 25(5)(1) or (2), as the case may be;
- 3) an authenticated copy of:
 - a) the grid connection agreement or of the connection terms and conditions, if

²⁾ Amendments to the aforementioned directive have been published in the Official Journal of the European Union L 158 of 19.06.2012, page 25.

no such agreement has been concluded,

- b) a final construction permit issued for the physical unit, if such a permit is required under building law regulations and has been issued,
- c) a final decision on environmental conditions of the consent for the implementation of the project, issued pursuant to the provisions of the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment (Journal of Laws 2017, items 1405, 1566 and 1999), if it is required and has been issued;
- 4) information confirming the ability to acquire financing;
- 5) substantive and financial schedule of the project;
- 6) information about the period of time for which the capacity provider intends to conclude the capacity agreement, with the provisions of Article 25(4) and (5) taken into consideration.

3. The capacity provider may seek the establishment of a refurbishing generating capacity market unit, comprising only a single existing physical unit. In such case, the certification application shall contain, in addition to the information referred to in paragraph 1, the following:

- 1) financial expenditures planned or spent, as well as the scope of work related to those expenditures;
- 2) net attainable capacity during the delivery period in the case in which refurbishment is abandoned;
- 3) value of the capacity obligation that will be offered at the capacity auction in the case in which refurbishment is abandoned, not greater than:
 - a) value of the capacity obligation that the capacity provider was offering in the case of refurbishment,
 - b) a product of the de-rating factor and the capacity referred to in item 2;
- 4) where the conclusion of a capacity agreement for a period of delivery longer than 1 year is sought - an independent study confirming:
 - a) the financial expenditures referred to in item 1, and
 - b) the planned fulfilment, by the physical unit comprising the refurbishing generating unit of the capacity market, of the emission-related parameters in compliance with the directives referred to in paragraph 2(2)(b), and
 - ba) planned compliance with the emission limit by a refurbishing generating

capacity market unit in each delivery year,

- c) where the conclusion of the agreement is sought under Article 25(5) - the planned fulfilment, by the physical unit comprising the refurbishing generating unit of the capacity market, of the parameter referred to in Article 25(5)(1) or (2), as the case may be;
- 5) information confirming the ability to acquire financing for refurbishment;
- 6) substantive and financial schedule of the project;
- 7) information on the change of technical and economic parameters, resulting from the refurbishment;
- 8) information about the term of the capacity agreement the capacity provider intends to conclude as a result of the capacity auction with regard to that unit, with the provisions of Article 25(4) and (5) taken into consideration.

4. The capacity provider seeking the establishment of a capacity market unit comprising one or more physical cross-border units:

- 1) shall submit information referred to in paragraph 1(1) and (4)-(8);
- 2) in the case of certification for additional auctions – shall identify the quarters of the delivery year with regard to which he intends to participate in the additional auctions;
- 3) shall submit a confirmation, issued by the transmission system operator relevant for the location of the physical cross-border unit, of the correctness of the technical parameters and of the locations of all physical cross-border units comprising a given capacity market unit;
- 4) shall submit an obligation of the transmission system operator relevant for the location of the physical cross-border unit to provide the operator with metering and clearing data, and data about the electricity generation or consumption reduction offers submitted by the physical cross-border unit, enabling to verify and settle the performance of the capacity obligation, pursuant to the terms of and in the manner set forth in the capacity market regulations referred to in Article 83.

Article 20. 1. The application for certification of the demand side response capacity market unit shall contain information referred to in Article 19(1) pertaining to the specific demand side response capacity market unit, including information about the resources or systems enabling to reduce the demand, such as information on the generating sources or electricity storages, if these comprise the demand side response

capacity market unit concerned.

2. Where the demand side response unit of the capacity market is comprised of a planned demand side response unit, the confirmation referred to in Article 19(1)(2) shall not be required with reference to such capacity market unit.

3. Where the capacity provider is seeking certification of a proven demand side response capacity market unit, the application for certification shall also contain confirmation of the demand side response performance test.

4. Where the capacity provider is seeking the conclusion of a capacity agreement for the demand side response unit of the capacity market for a delivery period of more than 1 year in a main auction, the application for certification of that unit shall contain, in addition to the information required under paragraph 1, the following:

- 1) financial expenditures planned or spent, as well as the scope of work related to those expenditures;
- 2) an independent study confirming:
 - a) the financial expenditures referred to in item 1, and
 - b) if the capacity market unit consists of at least one generating unit:
 - technical parameters of all generating units included in physical demand side response units forming part of a given demand side response capacity market unit and their planned compliance with the emission requirements, in accordance with Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) or, respectively, 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, and
 - planned compliance with the emission limit by all generating units forming part of physical units forming a given demand side response capacity market unit in each delivery year;
- 3) information on the period for which the capacity provider intends to conclude a capacity agreement, taking into account Article 25(4) points 2–4.

5. The application for certification of the demand side response capacity market unit comprising a physical cross-border demand side response unit shall contain information referred to in Article 19(4) pertaining to the specific demand side response

unit of the capacity market, including information about the resources or systems enabling to reduce the demand, such as information on the generating sources or electricity storages, if these comprise the demand side response capacity market unit concerned.

6. Where the capacity provider is seeking certification of a proven demand side response unit of the capacity market comprising a physical cross-border demand side response unit, the application for certification shall also contain confirmation of the demand side response test.

Article 21. While submitting, in the course of certification for the main auction or the additional auctions, the application for the establishment of a previously certified capacity market unit, the capacity provider may submit a certification application containing only a supplement to or a change of the information provided in the course of the previous certification for the main auction or for the additional auctions.

Article 22. 1. Where the certification application fails to meet the requirements set forth in Article 15, Article 16(1) or (2), Article 19 or Article 20 or in the capacity market regulations referred to in Article 83, the operator shall call upon the applicant to eliminate the formal defects of or gaps in the application, in the manner and within the deadline set forth in the said regulations.

2. Where the formal defects of or gaps in the certification application are not eliminated in due time, the operator shall refuse to issue the certificate and shall immediately communicate that fact to the applicant.

Article 23. The operator issues, pursuant to the certification application, a certificate confirming the establishment of a capacity market unit, if the owner of the physical unit or the entity they have authorised has submitted an application for its establishment, which certificate authorises that capacity market unit to participate in:

- 1) the main auction and one or more additional auctions occurring directly after that certification, provided that in the course of the general certification, all physical units comprising that capacity market unit have been entered for participation in the auction;
- 2) the secondary market, with regard to the delivery period that a given certification was concerned with.

Article 23a. 1. In the case of capacity market units which concluded a capacity agreement as a result of the main auction for more than 1 delivery period, the certificate

issued pursuant to Article 23(1) authorizes to participate in the secondary market in all delivery periods which the capacity agreement was concluded for.

2. In the case of shortening the duration of the capacity agreement to one year, pursuant to Article 46(2) or (3), the certificate issued pursuant to Article 23(1) authorizes for participation in the secondary market in the delivery year resulting from shortening the duration of this capacity agreement and in the next delivery year.

3. For the purpose of participation in the secondary market, based on the certificate referred to in Article 23(1) for a given capacity market unit, during the entire period of validity of the certificate, a de-rating factor is applied, which was determined for the first delivery period covered by this certificate.

4. In the case of a capacity market unit for which no capacity agreement was concluded during the capacity auction or a capacity agreement was concluded for no more than 1 delivery period, the certificate issued pursuant to Article 23 point 1 authorizes for participation in the secondary market only in the delivery year for which a given capacity auction was conducted, taking into account Article 24(2).

Article 24. 1. The certificate issued for the capacity market unit shall contain at least the following:

- 1) identification details of the capacity provider and of the capacity market unit;
- 2) qualification of the capacity market unit, in accordance with Article 25(1);
- 3) delivery period that the certificate is concerned with;
- 4) specification of the capacity auction the participation in which is authorised by the certificate;
- 5) value of the capacity obligation that will be offered at the capacity auction the certification process was concerned with;
- 6) in the case of a refurbishing generating capacity market unit - value of the capacity obligation that will be offered at the capacity auction in the case in which refurbishment is abandoned;
- 7) product of the net attainable capacity and the de-rating factor;
- 8) information about the status of the capacity market unit (price-maker or price-taker);
- 9) information on the number of delivery periods for which the capacity provider intends to conclude the capacity agreement as a result of the main auction - in the case of a new or refurbishing generating unit of the capacity market or a demand

side response unit of the capacity market, as referred to in Article 20(4).

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

- 1) the certificate issued for such a unit shall expire on the date on which the final results of the capacity auction are announced - in relation to the new generating unit of the capacity market;
- 2) the unit shall become an existing capacity market unit and its attainable capacity shall be equal to that defined in paragraph 1(6) - in relation to the refurbishing generating unit of the capacity market;
- 3) the certificate issued for the capacity market unit other than that specified in items 1 and 2 may be terminated, following the end of that capacity auction, by the operator, upon application of the capacity provider.

Article 25. 1. When issuing the certificate for a generating capacity market in the process of certification for the main auction, the operator qualifies that unit as:

- 1) an existing generating capacity market unit;
- 2) a planned generating capacity market unit - if it comprises only a planned physical generating unit;
- 3) a refurbishing generating capacity market unit - if the capacity provider has indicated in the certification application that the existing generating capacity market unit meets the requirement referred to in Article 32(1)(4)(b).

2. When issuing the certificate for a generating capacity market unit in the process of certification for additional auctions, the operator qualifies that unit as an existing generating capacity market unit.

3. When issuing the certificate for a demand side response capacity market in the process of certification for the main auction, the operator qualifies that unit as:

- 1) a proven demand side response capacity market unit - if confirmation of the passing of the demand side response test, as referred to in Article 53(1), has been attached to the certification application;
- 2) an unproven demand side response capacity market unit - if no confirmation of the passing of the demand side response test, as referred to in Article 53(1), has been attached to the certification application.

4. The certificate shall authorise the capacity provider to offer the capacity obligation in the case of:

- 1) a new generating unit of the capacity market meeting the parameter referred to in Article 32(1)(4)(a), for no more than fifteen consecutive delivery periods;
- 2) a new generating unit of the capacity market, a refurbishing generating unit of the capacity market or a demand side response unit of the capacity market, as referred to in Article 20(4), meeting the parameter referred to in Article 32(1)(4)(b), for no more than five consecutive delivery periods;
- 3) an existing generating unit of the capacity market, a demand side response unit of the capacity market different than that referred to in item 2, a new generating unit of the capacity market different than that referred to in items 1 and 2, a capacity market unit comprising physical cross-border units or a capacity market unit comprising physical interconnector units - for one delivery period, in the course of the main auction;
- 4) an existing generating unit of the capacity market, a demand side response unit of the capacity market, a capacity market unit comprising physical cross-border units or a capacity market unit comprising physical interconnector units - for one delivery period, in the course of an additional auction.

5. The capacity provider shall be authorised to conclude a capacity agreement for a delivery period that is two years longer than the maximum period defined in paragraph 4(1) or (2), as the case may be, if the capacity market unit referred to in paragraph 4(1) or (2), being a generating capacity market unit:

- 1) complies with the unit carbon dioxide emission rate of less than or equal to 450 kg per 1 MWh of generated electricity or, in the case of co-generation units, electricity and heat, and
- 2) in the case of co-generation units - at least half of the heat generated in such a unit is supplied to the heating system relying on hot water as the heat transmitting medium.

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

- 1) the price-maker status – in the case of:
 - a) a new or a refurbishing generating capacity market unit,
 - b) a demand side response capacity market unit or a capacity market unit comprising a physical cross-border demand side response unit,
 - c) a capacity market unit comprising a physical cross-border generating unit,
 - d) a physical interconnector unit;
- 2) the price-taker status - in the case of an existing generating capacity market unit.

7. A capacity market unit in the additional auction shall have:

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

Article 26. 1. In relation to a new generating unit of the capacity market and an unproven demand side response unit of the capacity market, the operator shall issue a provisory certificate.

2. The provisory certificate shall authorise the capacity provider to participate in a capacity market auction following the establishment, for the benefit of the operator, of the collateral referred to in Article 50. Where the capacity provider fails to establish the collateral within the deadline specified in regulations issued pursuant to Article 51, the capacity provider shall be deprived of the authorisation to participate in the capacity auction, as far as the capacity market unit for which the provisory certificate was issued is concerned.

3. The provision of paragraph 2 sentence one, related to the obligation to establish the collateral, shall not apply in a situation in which such collateral has already been established for the purpose of previous auctions, and the certificate authorising to participate in the main auction or in the additional auctions, issued for the demand side response capacity market unit remains in force.

Article 27. The operator shall submit, to the President of ERO and to the minister relevant for energy, within 10 days from completion of the procedure of certification for the main auction, information on the course of such procedure. The said information shall comprise, in particular, the following elements:

- 1) the number of capacity market units established and the sum of products of their net attainable capacities and de-rating factors, broken down into: existing, refurbishing and new generating capacity market units, demand side response capacity market units, generating capacity market units being electricity storages, capacity market units comprising physical cross-border units and capacity market units comprising physical interconnector units;
- 2) a list of physical units which, despite being entered for participation in the main auction in the course of the general certification procedure, have not participated

- in certification for the main auction;
- 3) the total volume of capacity obligations that the capacity providers will be offering in the main auction, broken down by price-makers and price-takers;
 - 4) a list of capacity market units that comprise physical units, along with existing or planned operating time limitations resulting from separate regulations, and with the type of such limitations;
 - 5) a list of entities requested to supplement their applications pursuant to Article 22(1);
 - 6) a list of entities who have been refused the certificate, pursuant to Article 22(2);
 - 7) the sum of products of the net attainable capacities of the capacity market units for which certificates authorising them to participate in the secondary market only have been issued, and their de-rating factors.

Article 28. The operator shall submit, to the President of ERO and to the minister relevant for energy, within 10 days from completion of the procedure of certification for additional auctions, information on the course of such procedure. The said information shall comprise, in particular, the following elements:

- 1) the number of capacity market units established and accepted for participation in additional auctions, and the sum of products of their net attainable capacities and de-rating factors;
- 2) the total volume of capacity obligations that the capacity providers will be offering in the individual additional auctions, broken down by price-makers and price-takers;
- 3) the list of entities called upon to supplement their applications, in accordance with Article 22(1);
- 4) the list of entities who have been refused the certificate, pursuant to Article 22(2);

Chapter 5

Capacity auctions

Article 29. 1. Capacity auctions are held on the capacity market, in which capacity providers offer capacity obligations.

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

- 1) the main auction – falling 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 is held in the fifth year prior to the delivery period, in line with the following time schedule:

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

with the exception of 2018, in which main auctions are held related to delivery periods falling in the years 2021–2023.

3a. In the course of the main auction referred to in paragraph 3, the capacity provider may offer the capacity obligation for delivery periods falling after the year for which the auction is conducted, in accordance with the issued certificate.

4. Additional auctions are held in the year preceding the year in which the delivery periods of each of those auctions fall, under reserve that additional auctions for all delivery periods are held at the same time.

Article 30. 1. A capacity auction is a multi-round auction with a decreasing price. The auction starts with the maximum price that is lowered in each subsequent round.

2. The capacity provider shall offer, with regard to a capacity market unit, in a given auction round, a capacity obligation specified in the certificate, at the price is equal to:

- 1) the price determined in the exit bid, if the capacity provider has submitted an exit bid in the round concerned or in the preceding round, or
- 2) the starting price of the subsequent round, if the capacity provider has not submitted an exit bid and the round concerned is not the final round of a capacity auction, or
- 3) the minimum price referred to in Article 31(5), if the capacity provider has not submitted an exit bid and the round concerned is the final round of a capacity auction.

3. The capacity provider may submit, in a capacity auction, only one exit bid with

regard to a capacity market unit.

4. With regard to capacity market units comprising:

- 1) physical cross-border units - it shall be assumed that the exit bid has been submitted at a price that is equal to the price specified in the bid accepted in the pre-auction, pursuant to which the capacity market unit has been certified;
- 2) physical interconnector units – it shall be assumed that the exit bid has been submitted in accordance with the principles specified in the agreement referred to in Article 6(3).

5. The capacity provider, with regard to a capacity market unit having the status of:

- 1) a price-taker, may submit, in a capacity auction, exit bids with a price that is lower than or equal to the maximum price specified for price-takers;
- 2) a price-maker, may submit, in a capacity auction, exit bids with a price that is not greater than the maximum capacity auction price.

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

- 1) must not be greater than the starting price of a given round, but must be greater than the starting price of the subsequent round;
- 2) must not be greater than the maximum price specified for the price-taker, as referred to in Article 32(1)(2), if the bid is concerned with a capacity market unit having the status of a price-taker;
- 3) must be greater than the minimum price referred to in Article 31(5), if a given round is the final round of the auction.

7. The capacity provider who offers, in the main auction, a capacity obligation for more than one delivery period, may shorten, on a one-off basis, the duration of the capacity obligation regarding a relevant capacity market unit, to one delivery period, and offer, in a given round, the minimum price of a multiannual capacity obligation, under reserve that the price concerned must not be greater than the starting price of the round concerned and must be greater than the starting price of the subsequent round. The shortening of the duration of the capacity obligation shall enter into force if the obligation concerned has been covered by a capacity agreement concluded at a price that is lower than the minimum price of the multiannual capacity obligation.

8. Prior to the beginning of each round, the operator provides the auction participants and the public with information comprising at least the following:

- 1) the starting price of the current and of the subsequent round;

2) the approximated total value of the capacity obligations offered by the capacity providers at a price that is not greater than the starting price of the round concerned.

9. The capacity provider who offers, in the main auction, a capacity obligation regarding a refurbishing generating capacity market unit and has not submitted an exit bid for such unit may submit, in any round, a one-off representation on his intention to give up the refurbishment, indicating the price below which the refurbishment will not be accomplished (minimum refurbishment price), under reserve that the price concerned must not be greater than the starting price of the round concerned and must be greater than the starting price of the subsequent round.

10. Where the capacity provider has submitted the representation referred to in paragraph 9, the capacity agreement may be concluded with regard to the refurbishing unit concerned solely at a price that is not lower than the minimum refurbishment price. If the auction price drops below the minimum refurbishment price, the status of the unit with regard to which the capacity obligation referred to in Article 24(1)(6) is offered shall be changed from a refurbishing generating capacity market unit to an existing generating capacity market unit with the status of a price-taker. In such case, the offered duration of the capacity obligation shall be shortened to one delivery period.

Article 31. The demand in a capacity auction shall be determined based on the following:

- 1) capacity demand established pursuant to Article 33;
- 2) market entry price of the new generating unit, reflecting the alternative cost of acquisition of capacity by the operator through the construction of a generating unit characterised by the lowest fixed operating and capital costs, with the potential margin on the sale of electricity and the provision of system services referred to in Article 9c(2)(8) of the Act of 10 April 1997 - Energy Law taken into consideration;
- 3) the coefficient increasing the price referred to in item 2, relied upon to determine the maximum price binding in the auction;
- 4) the parameter determining the capacity volume below the demand level, as referred to in item 1, for which the price achieves the maximum value referred to in item 3;
- 5) the parameter determining the capacity volume above the demand level, as referred to in item 1, for which the price achieves the minimum value of PLN 0.01/kW/month;

Article 32. 1. The following shall be the parameters describing the main auction:

- 1) volumes determining demand in the auction, as referred to in Article 31;
- 2) maximum price set for the price-taker, determined based on capital and operating fixed costs;
- 3) maximum number of rounds within the auction;
- 4) unit-rates of the capital expenditures related to the net attainable capacity, conditioning qualification of the capacity market unit as:
 - a) a new generating capacity market unit – authorised to offer, in the main auction, capacity obligations for not more than 15 delivery periods,
 - b) a new generating capacity market unit , a refurbishing generating capacity market unit or a demand side response capacity market unit – authorised to offer, in the main auction, capacity obligations for not more than 5 delivery periods;
- 5) minimum volumes of capacity obligations planned to be acquired as a result of additional auctions for the individual quarters of the delivery year that the main auction is concerned with;
- 6) de-rating factors for the individual groups of technologies;
- 7) maximum capacity obligation volumes for the zones referred to in Article 6(6).

2. The unit-rate capital expenditures referred to in paragraph 1(4), borne or planned to be borne between January of the fifth year preceding the delivery year and the delivery year, shall include, in the case of:

- 1) a refurbishing capacity market unit – financial expenditures on the construction of new technological systems, or on activities concerning existing technological systems, to satisfy the technological needs of the unit concerned;
- 2) a new capacity market unit – financial expenditures on the physical generating unit that the capacity market unit comprises;
- 3) a demand side response capacity market unit - financial expenditures on adapting the customer's machinery and equipment to provide the demand side response service, to construct an electricity storage or an internal electricity generating source that will constitute a part of the equipment of the end user.

3. The parameters referred to in paragraph 1(1)-(3) and (7), determined accordingly for the delivery quarters, and the parameters referred to in paragraph 1(6) which have been determined for the main auction for the same delivery year shall be the parameters describing additional auctions.

Article 33. The capacity demand in a capacity auction shall be determined based on the following:

- 1) the forecast capacity demand in the system, in a given delivery period;
- 2) the capacity reserve level required, over the demand in a given delivery period, determined based on the adopted standard pertaining to the security of electricity supply to end users, as specified in regulations issued pursuant to Article 68, understood as the permissible expected duration of discontinuity in the supply of electricity to end users, expressed in hours per year;
- 3) the volume of capacity:
 - a) ensured by the physical units which do not constitute an element of the capacity market units,
 - b) resulting from the effective capacity agreements concerned with capacity obligations for the same delivery period,
 - c) in the case of the main auction - planned to be acquired as a result of the additional auctions,
 - d) of interconnectors, with the ability to rely on these to cover the demand for capacity in the system and with the results of pre-auctions taken into consideration.

Article 33a. 1. Within 60 days from the date of receipt of the proposed values of the parameters referred to in Article 31(1), (2), (4) and (5) and Article 32 (1)(2)–(7) and (3), in accordance with Article 14(2), the President of ERO shall submit to the minister relevant for energy the proposed parameter referred to in Article 31(1), for the next main auction and the next additional auctions.

2. When preparing the proposal referred to in (1), the President of ERO may accept the proposals submitted by the operator in accordance with Article 14(2) or propose other values.

Article 34. 1. Upon acquiring an opinion of the President of ERO, the minister relevant for energy shall define, by means of a regulation, the parameters of the upcoming pre-auction, parameters of the upcoming main auction and of the upcoming additional auctions, as referred to in Article 32(1) and (3), taking into consideration the state's energy policy, relevance of the parameters used for the system's requirements, ensuring security of the system, as well as equal and non-discriminating treatment of capacity providers, as well as taking into consideration the expected availability of

transmission capacities and their share in ensuring the security of supply.

2. The minister relevant for energy shall issue the regulation referred to in paragraph 1 after the receipt of the proposal referred to in Article 33a(1) and no later than 18 weeks before the commencement of each main auction.

Article 35. 1. Where a defect of the dedicated ICT system with the help of which the auction is being or is planned to be conducted has taken place:

- 1) The President of ERO may, upon the operator's request, suspend the commencement of the capacity auction, by issuing an applicable decision;
- 2) the operator may withhold the commencement of the capacity auction for 24 hours at the most, or may suspend a capacity auction that has been commenced, immediately communicating that fact to the President of ERO and to the minister relevant for energy and indicating the reasons for which such auction has been withheld or suspended.

2. Immediately after the reasons for which the commencement of a capacity auction has been withheld cease to apply, the President of ERO shall announce, by means of a decision, the new date on which the withheld capacity auction shall commence.

3. The operator shall restart the suspended capacity auction immediately after the reasons for which it has been suspended cease to apply.

4. No appeal may be filed against the decision referred to in paragraph 1(1) and (2).

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

- 1) the round in which the combined volume of the capacity obligations for which no exit bids have been submitted, with the representations on giving up the refurbishment taken into consideration, is not greater than the demand for capacity, or
- 2) the last round.

2. The operator shall identify the capacity market units with regard to which capacity agreements will be concluded as a result of the capacity auction, taking into consideration the following:

- 1) the capacity demand identified;
- 2) the exit bids submitted and representations on giving up the refurbishment;
- 3) non-divisible nature of the capacity obligations offered in the auction.

3. Due to the condition of non-divisibility referred to in paragraph 2(3), based on the analysis of costs and advantages, drawn up in the manner defined in the capacity

market regulations referred to in Article 83, the combined volume of capacity obligations for which the capacity agreements are concluded may be lower or greater than the demand identified in the final round.

4. Where the capacity auction has ended in the manner referred to in paragraph 1(1), the capacity auction clearing price shall be the highest price at which the capacity obligation has been offered in relation to the capacity market units referred to in paragraph 2.

5. Where the capacity auction has ended in the manner referred to in paragraph 1(2) and the combined volume of capacity obligations offered by the capacity providers is greater than the demand for capacity, the capacity auction clearing price shall be the price referred to in Article 31(5), and the capacity agreements shall be concluded with regard to all capacity market units for which the capacity providers have not submitted exit bids, with the submitted representations on giving up the refurbishment taken into consideration.

6. For the purpose of drawing up a list of the capacity market units that will be covered by capacity agreements as a result of the capacity auction, in the case of units with regard to which exit bids with an equal price have been submitted, the bids shall be ordered, in the first place, based on the subsequent lowest carbon dioxide emission unit-rates, and in the second place, based on the time of submitting the exit bids.

7. In the case of a capacity auction that has concluded with a capacity obligation covering capacity market units comprising physical cross-border units, the price of the capacity obligations for all such units in the individual zones, as referred to in Article 6(6), shall be the highest price of an exit bid concerning the capacity market unit covered by the capacity obligation, located in a given zone.

Article 37. A physical unit comprising a capacity market unit which, despite participating in the main auction and in the additional auctions for the same delivery year has not been covered by the capacity obligation, may be withdrawn from operation a year from notifying the withdrawal of such unit from operation, pursuant to the rules agreed upon with the operator of the electric power system to whose grid the unit concerned is connected.

Article 38. 1. The operator shall enter in the register and shall communicate to the public, within 3 business days from the conclusion of the capacity auction, the provisional results of the auction, containing:

- 1) a list of capacity market units with regard to which capacity agreements have been concluded, along with identification of the capacity providers;
- 2) information on the volume of the capacity obligations resulting from the capacity agreements concluded, and on the terms of such agreements;
- 3) capacity auction clearing price.

2. The operator shall submit, to the minister relevant for energy and to the President of ERO, within 7 calendar days from the completion of the capacity auction, information on the course of such auction.

Article 39. 1. Where the capacity auction has been conducted in violation of the provisions of the Act or of the auction terms and conditions, or where a participant has behaved in a manner that violates the provisions of the law or the regulations of the capacity market referred to in Article 83:

- 1) if the circumstances referred to above have exerted a considerable impact on the results of the auction - the President of ERO shall annul the capacity auction by issuing a relevant decision,
- 2) the minister relevant for energy or the President of ERO may, by means of decision, annul the capacity auction

– within 14 days from the completion of the capacity auction.

2. Where the performance of the capacity agreements concluded as a result of the auction poses a threat to the security of supply, the minister relevant for energy may, within 21 days from the completion of the capacity auction, annul the capacity auction by issuing a relevant decision.

3. The President of ERO shall announce the final results of the capacity auction in the Public Information Bulletin, on its website, on the first business day following the 21st day from the completion of the capacity auction.

4. Where the capacity auction is annulled due to reasons specified in paragraph 1 or 2, the minister relevant for energy shall announce the date of the new capacity auction within 14 days from the date on which the decision annulling the capacity auction is issued. Certificates issued prior to the annulled capacity auction shall remain in force and shall continue to serve as a basis for participating in a new auction.

Article 40. 1. The minister relevant for energy shall draw up, on an annual basis, a report on the operation of the capacity market in the preceding year, containing, in particular, information on the course of the general certification process and of the main

certifications, on the results of the capacity auctions, on the performance of the capacity obligations and presenting current and forecast situation with regard to generating capacities.

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

3. The President of the Office of Competition and Consumer Protection shall submit the report referred to in paragraph 1 on an annual basis, by 31 May, to the European Commission.

Article 40a. 1. The President of ERO shall calculate and publish in the Public Information Bulletin on its website:

- 1) the value of undelivered electricity;
- 2) the cost of the new unit.

2. The values referred to in paragraph 1 shall be calculated once every 5 years on the basis of the method referred to in Article 23(6)(a) or (b) of Regulation 2019/943.

3. The values referred to in paragraph 1 may be calculated more frequently than within the time limit specified in (2), if the President of ERO identifies a significant change in these values. In such a case, the President of ERO shall announce the values referred to in paragraph 1, together with the justification for the change.

Article 40b. The President of ERO shall, within 14 days from the date of announcement of the values referred to in Article 40a(1)(1) or (2), inform the minister relevant for energy about their announcement. In the case referred to in Article 40a(1)(2), the President of ERO shall also present the data used to calculate the cost of the new unit.

Chapter 6

Capacity agreement

Article 41. Under the capacity agreement:

- 1) the capacity provider undertakes to perform, over a specified period of time, the capacity obligation by a specified capacity market unit;;
- 2) the operator undertakes to:
 - a) verify the performance of the capacity obligation,
 - b) submit information necessary for the capacity provider to issue accounting documents constituting a basis to pay remuneration for the performance of the capacity obligation,

- c) determine the value of penalties due from the capacity provide for the failure to perform the capacity obligation;
- 3) the manager of the capacity market settlements referred to in Article 61(2) undertakes to pay the remuneration for the performance of the capacity obligation.

Article 42. 1. The capacity agreement shall include at least the following:

- 1) identification of the capacity market unit through which the capacity provider performs the capacity obligation;
- 2) duration of the capacity obligation;
- 3) the manner in which the capacity obligation is to be performed, and the remuneration for its performance, including the price;
- 4) provisions concerning:
 - a) the payment of penalties referred to in Article 59,
 - b) the seizure of collaterals referred to in Article 50,
 - c) monitoring the capacity market unit investment progress:
 - which include a planned physical generating unit, for which a capacity agreement has been concluded,
 - for which a capacity agreement has been concluded for more than 1 delivery period,
 - d) performance of the demand side response test, as referred to in Article 53(1), if the agreement is concerned with an unproven demand side response capacity market unit;
- 5) its termination terms;
- 6) responsibility of the parties for the failure to perform or for undue performance of the agreement.

2. A template of the capacity agreement is presented in an appendix to the capacity market regulations referred to in Article 83.

Article 43. In the case of a capacity market unit comprising physical interconnector units, the agreement referred to in Article 6(3) shall become, at the time at which the capacity obligation of that unit comes into force as a result of a capacity auction, the capacity agreement referred to in Article 41.

Article 44. 1. The capacity agreement shall be deemed concluded at the time at which the preliminary agreements of the auction, as referred to in Article 38(1), are announced, under the condition precedent that announcement of the final results of the

auction has been made.

2. The capacity agreement may also be concluded as a result of a secondary market transaction, at the time at which the transaction is entered into the register.

2a. The settlement body referred to in Article 61 (2) shall become a party to the capacity agreement under the law upon its conclusion.

3. The capacity agreement shall be concluded for a definite period of time.

4. Remuneration for the performance of the capacity obligation shall become due on the date on which the delivery period commences.

5. If the capacity agreement is concerned with a new or a refurbishing capacity market unit or a demand side response capacity market unit, as referred to in Article 20(4), the remuneration shall become due under the condition that the capacity provider proves his fulfilment of the requirements referred to in Article 52.

Article 44a. During the resignation period referred to in Article 24a(3) of the Act of 30 April 2004 on the procedural issues concerning state aid (Journal of Laws of 2021, item 743), with respect to a given capacity market unit, its capacity obligation is assumed to be zero.

Article 45. The capacity agreement shall not be valid unless concluded electronically.

Article 46. 1. The capacity agreement shall be terminated if it was concerned with:

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

2. Where the capacity agreement is concerned with a refurbishing generating capacity market unit and the capacity provider has failed to meet the obligation referred to in Article 52(1) or (2), the term of the capacity agreement shall be reduced to one year and the capacity provider must not receive, for such unit, a certificate confirming its role of a refurbishing capacity market unit in two subsequent certification procedures for the

main auction taking place after the year in which the term of the capacity agreement was reduced.

3. Where the capacity agreement is concerned with a demand side response capacity market unit, as referred to in Article 20(4) and the capacity provider has failed to meet the obligation referred to in Article 52(2)(2) or (3), the term of the capacity agreement shall be reduced to one year and the operator shall retain the collateral referred to in Article 50(1) as a penalty for the failure to perform the capacity agreement.

4. Where the capacity agreement concerns a refurbishing generating capacity market unit which, pursuant to Article 25(5), as a result of the main auction, concluded a capacity agreement for a period longer than that resulting from the provisions of Article 25(4), and the capacity provider has not complied with the obligation referred to in Article 52(2)(3)(c), prior to the start of the delivery period, the duration of the capacity agreement shall be reduced to the period specified in Article 25(4), respectively.

5. Where the capacity agreement concerns a new generating capacity market unit which, pursuant to Article 25(5), as a result of the main auction, concluded a capacity agreement for a period longer than that resulting from the provisions of Article 25(4), and the capacity provider has not complied with the obligation referred to in Article 52(2)(3)(c), prior to the end of the third delivery period year, the duration of the capacity agreement shall be reduced to the period specified in Article 25(4), respectively.

Article 47. 1. If the capacity agreement has been terminated in a situation referred to in Article 46(1);

- 1) the operator shall retain or execute the collateral referred to in Article 50(1) as a penalty for the failure to perform the capacity agreement;
- 2) the capacity provider who has been released from the obligation to establish the collateral referred to in Article 50(1) shall pay a penalty in the amount equal to the value of the collateral he would be required to establish had he not been released from the obligation in question.

2. Where the capacity agreement concerns a new generating capacity market unit, for each month of the delivery year that started before the capacity provider's compliance with the requirements referred to in Article 52(2), the capacity provider shall pay a penalty in the amount of:

- 1) 5% of the monthly value of the capacity obligation resulting from the capacity agreement – in the first delivery year,

- 2) 15% of the monthly value of the capacity obligation resulting from the capacity agreement – in the second delivery year,
- 3) 25% of the monthly value of the capacity obligation resulting from the capacity agreement – in the third delivery year

– calculated on the basis of the highest capacity auction clearing price relating to a given delivery year.

3. In the case referred to in paragraph 2, for a given capacity market unit, until the date of submission of the information referred to in Article 52(2), the provisions of Article 59 shall not apply.

4. If the capacity agreement concerning a new generating capacity market unit is terminated before the requirements referred to in Article 52(2) are met, the provisions of paragraph 1(1) and (2) shall apply accordingly. In the case referred to in the first sentence, the capacity provider shall pay a penalty corresponding to the total amount of the penalties referred to in paragraph 2, which have not become due by the date of termination of the capacity agreement and which would have been charged by the end of the third delivery year or by the end of the period for which the capacity agreement was concluded, if it was concluded for less than three delivery years.

Article 47a. 1. In the case of a capacity agreement concluded for more than 1 delivery period in regard to new or refurbishing generating capacity market unit for which the net available capacity of the physical generating unit forming that capacity market unit has changed, and that change was not greater than 5% of the capacity specified in the certification for the main auction, as a result of which the given capacity market unit concluded that capacity agreement, the capacity provider may request the operator to change that value.

2. The application referred to in paragraph 1 includes a justification for the change and may be submitted by the capacity provider once, no later than upon the submission of the information referred to in Article 52(2).

3. On the basis of the application referred to in paragraph 1, within 14 days from the date of receipt of this application, the operator shall change the product of the net available capacity and the de-rating factor included in the certificate and, in the case of reduction in the net available capacity, proportionally reduce the capacity obligation volume specified in the capacity agreement, by entering the updated data in the register. The reduction in the capacity obligation shall result in the reduction in the amount of remuneration due to the capacity provider for the performance of capacity obligation in

accordance with the concluded capacity agreement and the retention by the operator of the relevant part of the collateral referred to in Article 50(1).

4. If the changes referred to in paragraph 3 are made, the fulfilment of the obligations referred to in Article 52 shall refer to the changed net available capacity.

5. If the changes referred to in paragraph 3 are made as part of the independent study referred to in Article 52(2)(3), the capacity provider shall additionally submit to the operator a confirmation concerning the changed net available capacity.

Article 47b. 1. In the case of a capacity agreement concluded for more than 1 delivery period for a new generating capacity market unit that will not meet the emission limit during the delivery period, the capacity provider may submit to the operator a declaration on its termination.

2. From the moment of submission of the declaration referred to in paragraph 1, the performance of the provisions of the capacity agreement referred to in Article 42(1)(4)(c) shall be suspended.

3. The capacity agreement for which the declaration referred to in paragraph 1 has been submitted, hereinafter referred to as the “terminated agreement”, shall be terminated upon indication to the operator by the capacity provider of:

- 1) the capacity agreement meeting the requirements specified in paragraph 4(1) and paragraphs 5 and 6, concluded in the course of the capacity auction conducted after the submission of the declaration referred to in paragraph 1 and no later than 12 months prior to the start of the first delivery period of the terminated agreement, and
- 2) the capacity agreement meeting the requirements specified in paragraph 4(2) and paragraph 6, concluded in the course of the capacity auction conducted after the submission of the declaration referred to in paragraph 1 and before the start of the first delivery period of the terminated agreement.

4. The capacity obligation covered by the capacity agreement referred to in paragraph 3:

- 1) point 1 – must not be lower than 80% of the capacity obligation covered by the terminated agreement;
- 2) point 2 – must not be lower than the difference of 110% between the capacity obligation covered by the terminated agreement and the capacity obligation covered by the capacity agreement referred to in paragraph 3(1).

5. The capacity agreement referred to in paragraph 3(1) shall apply only to a new

generating capacity market unit consisting of a physical generating unit located in the same county as the physical unit covered by the terminated agreement.

6. The capacity agreement referred to in paragraph 3(1) and (2):

- 1) shall apply to a new generating capacity market unit which, during the delivery period, will meet the emission limit, and
- 2) shall cover at least the same number of delivery periods as the terminated agreement, and
- 3) shall be concluded by the capacity provider being a party to the terminated agreement or by an entity belonging to a capital group, within the meaning of Article 4(14) of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2021, item 275) to which this capacity provider belongs, taking into account paragraph 7.

7. If it is not possible to determine the entrepreneur exercising the control, within the meaning of Article 4(4) of the Act of 16 February 2007 on competition and consumer protection, over the capacity provider being a capital company, the capacity agreement referred to in paragraph 3(1) or (2) may be concluded by an entity being a member of the capital group to which the entity holding at least 50% of shares in the share capital of the capacity provider belongs.

8. In the event of termination of the capacity agreement pursuant to paragraph 3, the operator shall:

- 1) release the collateral referred to in Article 50(1);
- 2) remit the penalties referred to in Article 47(2) if they have become due with respect of that agreement.

9. With respect to the capacity agreements referred to in paragraph 3, the provisions of Article 47a shall not apply.

10. If the capacity provider fails to indicate the capacity agreements referred to in paragraph 3 to the operator within 14 days from the start of the first delivery period specified in the terminated agreement, the declaration referred to in paragraph 1 shall not have legal effects.

Chapter 7

Secondary market

Article 48. 1. By concluding a secondary market transaction, the capacity provider may, after conclusion of:

- 1) additional auctions – transfer the capacity obligation in part or in whole to another capacity market unit, with respect to the entire delivery period or its part, provided that only the future part of the delivery period may be traded (secondary trading of capacity obligation);
- 2) the system stress event – settle, in whole or in part, the failure to perform the capacity obligation through the supply of capacity by another capacity market unit over the amount required in that system stress event with regard to that unit, pursuant to Article 57(1)(2) (reallocation of the volume of the performed capacity obligation).

2. The transactions referred to in paragraph 1:

- 1) are concerned with:
 - a) capacity market units certified for the same delivery year, under reserve that the demand side response capacity market unit must have the status of a proven unit,
 - b) capacity market units comprising physical units located in the transmission system or capacity market units comprising physical units located in the same zone referred to in Article 6(6), provided that the capacity obligation of a capacity market unit comprising physical cross-border units may also be transferred to a capacity market unit comprising physical units located in the system;
- 2) must not be concerned with:
 - a) the capacity obligation performed by a new generating capacity market unit , if the capacity provider has failed to meet the requirements referred to in Article 52(2),
 - b) capacity market units with regard to which the capacity provider has failed to paid the penalty referred to in Article 59,
 - c) demand side response capacity market units that have failed to perform the demand side response test,
 - d) capacity market units that have completed the test system stress event with a negative result - until the date of receipt of the notice referred to in Article 67(9),
 - e) capacity market units comprising physical interconnector units,
 - f) with respect to secondary trading of capacity obligation– capacity market units for which no declaration on the planned compliance with the emission

limit has been submitted in the application for certification, taking into account Article 49a,

- g) with respect to secondary trading of capacity obligation– capacity market units covered by the resignation period referred to in Article 24a paragraph 3 of the Act of 30 April 2004 on the procedural issues concerning state aid;
- 3) must be submitted for entry to the register in the case of transactions referred to in:
 - a) paragraph 1(1) – no later than 24 hours before the start of the period to which they relate,
 - b) paragraph 1(2) – after the operator makes available the metering and settlement data relating to a given system stress event, but no later than on the 5th business day after making the data available;
- 4) must meet other requirements set forth in regulations issued pursuant to Article 68.

Article 49. 1. The transaction referred to in Article 48(1) shall be effective provided that it has been submitted for entry in the register and the operator has failed to express his objection with regard to the transaction and has entered that transaction to the register.

2. The operator may express his objection with regard to the transaction referred to in Article 48(1), within 3 business days from the receipt of the submission, if the transaction turns out to be in violation of Article 48(2).

3. The transaction referred to in Article 48(1)(1), entered in the register after the start of the period to which it relates, shall be effective for that period.

Article 49a. The provision of Article 48(2)(2)(f) shall not apply to:

- 1) a capacity obligation which arose no later than on 31 December 2019 as a result of the capacity auction, also if this capacity obligation was transferred, in whole or in part, to another capacity market unit as a result of transactions on the secondary market, regardless of the number of transactions to which it was subject;
- 2) a capacity market unit that obtained a certificate for a given delivery period in the certification for the capacity auction conducted prior to the main auction for the delivery year 2025, if prior to reporting the transaction to the register with respect to secondary trading of capacity obligation, the capacity provider has submitted a declaration through the register on the planned compliance with the emission limit in a given delivery year.

Article 49b. In the case of a capacity market unit which has settled non-

performance of the capacity obligation in a given system stress event by reallocating the volume of the performed capacity obligation by another capacity market unit, any excess of the adjusted capacity obligation performance created as a result of reallocation shall not constitute the basis for payment of the bonus referred to in Article 66(1).

Article 49c. The agreements covering the secondary trading of capacity obligation or reallocation of the volume of performed capacity obligation referred to in Article 48(1), the provisions of the Act of 11 September 2019 – Public Procurement Law (Journal of Laws of 2021, item 1129 as amended) shall not apply.

Chapter 8

Collateral

Article 50. 1. In the case of participation in a pre-auction, or in the case of issuing a provisory certificate referred to in Article 26(1), the participant of the pre-auction or the capacity provider, as the case may be, shall be obliged to establish collateral for the benefit of the operator.

2. The capacity provider shall be released from the requirement to establish the collateral if he holds a rating, assigned by a specialised institution, with the minimum level thereof specified in regulations issued pursuant to Article 51.

3. Upon completion of the pre-auction, the operator shall return the collateral to the pre-auction participant:

- 1) submitted with respect to bids which have not been accepted;
- 2) with respect to the difference between the maximum capacity volume in the bids of a given pre-auction participant, resulting from the collateral provided, and the capacity volume in the bids the participant concerned has submitted.

4. Upon issuing a certificate for a capacity market unit consisting of one or more physical cross-border units, the operator shall release the collateral provided prior to the pre-auction with the amount thereof equal to the product of the collateral rate and the volume of capacity obligations that the capacity provider intends to offer in a given capacity auction with regard to that capacity market unit. The remaining part of the collateral shall be retained by the operator.

Article 51. 1. The minister relevant for energy shall define, by way of regulation, the detailed conditions based on and the manner in which the collateral shall be established, taking into consideration the requirement to ensure due performance of the

capacity obligation by the capacity providers, and the proportional nature of the collateral established.

2. The regulation referred to in paragraph 1 shall determine the following:

- 1) the value of the collateral, related to the volume of the capacity obligation offered by the capacity provider, and the value of the collateral established by a pre-auction participant;
- 2) the forms in which the collateral may be established;
- 3) the dates by which the collateral shall be established by and released to the capacity providers and pre-auction participants;
- 4) the minimum rating based on which the requirements to establish the collateral may be waived and the institutions authorised to assign that rating.

Article 52. 1. The capacity provider who, as a result of the main auction, has concluded a capacity agreement for a new or refurbishing generating capacity market unit, shall submit to the operator, within 24 months from the date of publication of the final results of the capacity auction, documents confirming:

- 1) the incurred capital expenditures in the amount of at least 10% of the required capital expenditures, calculated as the product of the net available capacity of a given capacity market unit and the unit-rate of capital expenditures specified for a given main auction, referred to in Article 32(1)(4)(a) or (b), respectively;
- 2) conclusion of agreements relating to the investment project with the total value of at least 20% of the required capital expenditures, calculated as the product of the net available capacity of a given capacity market unit and the unit-rate of capital expenditures specified for a given main auction, referred to in Article 32(1)(4)(a) or (b), respectively.

2. The capacity provider who, as a result of the main auction, has concluded a capacity agreement for more than 1 delivery year, shall submit to the operator, prior to the commencement of the first delivery year that capacity agreement concluded is concerned with, the following:

- 1) in the case of a new or refurbishing capacity market unit – documents confirming the ability of that unit to deliver capacity, in the amount not lower than 95% of the capacity obligation of that unit, through uninterrupted period of operation of at least one hour;
- 2) documents confirming the completion of the material scope of the investment

- project corresponding to the capital expenditures referred to in point 3 letter a;
- 2a) in the case of a new generating capacity market unit – a list of metering points assigned to the physical unit forming a given capacity market unit;
 - 3) an independent study confirming:
 - a) incurrence of the capital expenditures for a given capacity market unit in the amount not lower than the required level of expenditures, calculated as the product of the net available capacity of a given capacity market unit and the unit-rate of capital expenditures specified for a given main auction, referred to in Article 32(1)(4)(a) or (b), respectively, and
 - b) fulfilment of the emissions-related requirements referred to in Article 19(2)(2)(b), Article 19(3)(4)(b), or of the technical parameters referred to in Article 20(4)(2)(b), as the case may be, and
 - ba) compliance with the emission limit referred to in Article 19(2)(2)(ba) and in paragraph 3(4)(ba) or in Article 20(4)(2)(b), second indent, respectively,
 - c) fulfilment of the parameter referred to in Article 25(5)(1) or (2), as the case may be - in the case of a generating capacity market unit that has concluded, as a result of the main auction, pursuant to Article 25(5), a capacity agreement for a period of time that is longer than resulting from Article 25(4);
 - 4) the amount of public aid referred to in Article 62(1), granted up to the date of submission of the information.

3. In the case referred to in Article 47(2), with respect to a given capacity market unit, the information referred to in paragraph 2, together with the independent study referred to in paragraph 2(3), shall cover the period until the date of submission of such information.

4. The operator shall confirm that the capacity provider meets the requirements referred to in paragraphs 1 and 2 by making an entry in the register.

Article 53. 1. In the case of an unproven capacity market unit:

- 1) covered by the capacity agreement – no later than one month before the start of the delivery period specified in the capacity agreement,
- 2) not covered by the capacity agreement – no later than one month prior to the start of the last quarter of the delivery year specified in the certificate issued for this capacity market unit

– the capacity provider performs a demand side response performance test, hereinafter referred to as the “test”, consisting in delivering capacity continuously for a period of at least one hour.

2. The test shall be conducted by the operator following the receipt, from the capacity provider, of a notice about readiness to conduct the test. In the case of a demand side response capacity market unit that comprises physical units connected to the distribution grid, the operator shall conduct the test in cooperation with the distribution system operator.

3. The notice referred to in paragraph 2 must not be concerned with a demand side response capacity market unit that comprises a planned demand side response unit which has not been fully substituted by the capacity provider with one or more physical demand side response units.

4. If, as a result of the test, the capacity provider has provided capacity of volume:

- 1) not lower than 80% of the product of the attainable capacity and the de-rating factor, as set forth in the certificate, the test result shall be deemed to be positive and the operator shall issue a confirmation of the ability to provide a demand side response;
- 2) lower than 80% of the product of the attainable capacity and the de-rating factor, as set forth in the certificate, the test result shall be deemed to be negative.

5. The capacity provider shall receive, on the basis of an application submitted no later than 3 working days from the date of obtaining information from the operator about the test result, the confirmation referred to in paragraph 4(1), despite the negative result of the test, if the capacity market unit has delivered capacity in the amount not lower than 50% of the product of the available capacity and the de-rating factor indicated in the certificate. The confirmation shall specify the available capacity corresponding to the capacity obligation actually performed during the test. In such case, the capacity obligation of this unit and the available capacity shall be reduced accordingly. A reduction in the capacity obligation shall result in a corresponding reduction in the amount of remuneration due to the capacity provider for the performance of the capacity obligation in accordance with the concluded capacity agreement.

Article 53a. A planned demand side response unit being a part of a demand side response capacity market unit may not be replaced by one or more physical demand side

response units if this causes that the demand side response capacity market unit, comprising these units, in the delivery period does not comply with the emission limit.

Article 54. The operator shall return the collateral to the capacity provider upon:

- 1) receipt of the confirmation:
 - a) of fulfilment of the requirements referred to in Article 52(2),
 - b) referred to in Article 53(4)(1), or in the case of conclusion of a capacity agreement for more than 1 delivery year – this confirmation and the confirmation of fulfilment of the requirements referred to in Article 52(2),
 - c) referred to in Article 53(5), or where a capacity agreement is concluded for more than 1 delivery year – this confirmation and the confirmation of compliance with the requirements referred to in Article 52(2), taking into account the fact that in both cases the operator shall return the collateral reduced proportionally by the value resulting from the test;
- 2) determining, upon request of the capacity provider, that the certificate has expired, in accordance with Article 24(2)(3);
- 3) expiry of the certificate in accordance with Article 24(2)(1).

Chapter 9

Capacity market register

Article 55. 1. The register is maintained by the operator.

2. The register is an electronic platform relied upon to operate the capacity market, to collect, process and exchange commercial, settlement and technical data pertaining to that market and to submit the representations required from the capacity market participants under the act, and to conclude secondary market transactions.

3. The register shall contain, in particular, information related to:

- 1) dates, conditions and results of the certification process, including the data acquired;
- 2) physical units and planned demand side response units, obtained in the course of the general certification process;
- 3) capacity market units and the certificates awarded to these;
- 4) capacity providers participating in the capacity market, along with the capacity market units they dispose of;
- 5) results of the pre-auctions, including the bids selected;

- 6) capacity auction dates;
- 7) provisional and final capacity auction results;
- 8) representations submitted by capacity auction participants in the course of the auctions, with the time of their submission indicated;
- 9) system stress events announced;
- 10) capacity agreements in force;
- 11) performance of capacity obligations;
- 12) remuneration for the performance of the capacity obligations, penalties for the failure to perform the said obligation, and bonuses for the performance of the capacity obligation beyond the level required;
- 13) wording of representations of capacity market participants, other than those referred to in item 8;
- 14) secondary market transactions.

4. Register entries pertaining to general certification and related to:

- 1) a planned physical generating unit – shall remain 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 specified in item 1 - shall remain valid until the commencement of the general certification process in the following year.

5. The operator shall ensure access to the register to the minister relevant for energy and to the President of ERO, in accordance with the provisions on the protection of confidential information or of other legally protected information.

6. The register shall be available to the capacity market participants, in compliance with the provisions on the protection of confidential information or of other legally protected information.

7. The operator shall control and process the data contained in the register in the manner and in accordance with the principles set forth in the Act of 29 August 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922).

Article 56. 1. The operator shall maintain the register, taking good care of the security, up-to-date nature and durability of the data registered therein.

2. The data entered in the register shall be deemed to be factually correct.

3. Representations submitted to the register shall be deemed submitted at the time of their entry into the register.

4. Applications, information and representations submitted to the register shall be

appended with a qualified electronic signature.

SECTION III

Performance of the capacity obligation and settlements performed on the capacity market

Chapter 1

Performance of the capacity obligation

Article 57. 1. Performance of the capacity obligation shall consist in:

- 1) maintaining the capacity market unit's readiness to provide, to the system, the electrical capacity specified in the capacity agreement, and
- 2) providing electrical capacity to the system during stress events, in an amount equal to the adjusted capacity obligation referred to in Article 58(1) – in the case of a capacity market unit comprising physical units located within the system, and in the case of a capacity market unit comprising physical interconnector units, or
- 3) providing electrical capacity to the transmission system of a European Union Member State directly interconnected with the system, or maintaining the readiness to provide capacity, during system stress events, in an amount equal to the adjusted capacity obligation referred to in Article 58(1) – in the case of a capacity market unit comprising physical cross-border located within the system concerned.

2. The obligation referred to in:

- 1) paragraph 1(1) shall be established on the date of commencement of the delivery period for which the capacity agreement has been concluded and shall last until the end of that period;
- 2) paragraph 1(2) and (3) shall be established at the commencement of each system stress event period and shall last until its conclusion.

3. The capacity provider shall perform the capacity obligation with regard to providing capacity during the system stress event via the capacity market unit located within the system:

- 1) comprising solely physical units actively participating in the balancing of the system within the framework of the central balancing mechanism - by ensuring the available capacity required and by complying with the operator's instructions, in accordance with the procedures referred to in Article 9g(6) of the Act of 10 April 1997 – Energy Law;

- 2) other than that referred to in item 1, by:
 - a) generating electricity – in the case of a generating capacity market unit,
 - b) temporarily reducing the consumption of electricity from the electricity grid - in the case of a demand side response capacity market unit.

4. The capacity provider shall perform the capacity obligation by providing capacity during the test system stress event affecting the capacity market unit comprising physical cross-border units, by:

- 1) generating electricity – in the case of a cross-border generating capacity market unit;
- 2) temporarily reducing the consumption of electricity from the electricity grid - in the case of a cross-border demand side response capacity market unit.

5. The adjusted capacity obligation shall be deemed performed, during the system stress event, by capacity market units comprising physical interconnector units if the measured flow of capacity from the zone referred to in Article 6(6) in which a given unit is located was, during the system stress event, greater than or equal to the sum of all volumes of the adjusted capacity obligation required to be performed by capacity market units comprising physical interconnector units located within the zone concerned.

6. In the case of a synchronous profile zone referred to in Article 6(6)(1), where the capacity obligation has not been performed in accordance with paragraph 5, the failure of the individual units of the capacity market comprising physical interconnector units to perform the capacity obligation shall be proportional to:

- 1) the volume of the capacity obligation of a given capacity market unit and inversely proportional to the sum of the capacity obligations of all capacity market units in a given zone - where the operator and all capacity providers in the possession of capacity market units comprising physical interconnector units has made available the transmission capacities corresponding, accordingly, at least to the adjusted capacity obligations of the individual units;
- 2) the missing volume of the transmission capacities made available in reference to a given intersystem connection, and inversely proportional to the sum of all missing transmission capacities made available with regard to all intersystem connections in a given zone - if the operator or the capacity providers have failed to make available, with regard to one or more interconnectors, the transmission capacities in an amount equal to or greater than the values of the adjusted capacity obligations of the capacity market units corresponding to the individual interconnectors.

7. The adjusted capacity shall be considered performed, during the system stress event, by capacity market units comprising physical cross-border units, if:

- 1) the measured flow of capacity from the zone referred to in Article 6(6) in which a given unit is located was, during the system stress event, greater than or equal to the sum of all volumes of the adjusted capacity obligation required to be performed by capacity market units located within the zone concerned, or
- 2) the capacity delivered to the system by the unit that is directly interconnected with the system, as a result of generation or reduction of demand of electricity, was not lower than the adjusted capacity obligation of the unit concerned, or
- 3) the capacity delivered to the system by the unit that is directly interconnected with the system, as a result of generation of electricity or demand side response, increased by the unused valid bids to generate or reduce the demand for electricity, as submitted by the unit concerned at the energy exchange, was not lower than the adjusted capacity obligation of the unit concerned, or
- 4) the capacity delivered by the unit concerned to the system that is directly interconnected with the system, as a result of generation of electricity or demand side response, increased by the unused valid bids to generate or reduce the demand for electricity, as submitted by the unit concerned at the energy exchange and the balancing market, was not lower than the adjusted capacity obligation of the unit concerned.

8. In the case of demand side response capacity market units comprising physical cross-border demand side response units, the condition of validity of the bid, as referred to in paragraph 7(3) and (4), shall apply to the value of the demand side price bid that is not greater than two-fold the average price at the electricity exchange in a given delivery year.

9. The operator shall announce the system stress event by publishing alerts on its website and by introducing a relevant entry to the register. The alert shall be published not later than 8 hours prior to the commencement of the system stress event.

10. The operator may decide not to announce a system stress event despite the surplus capacity available under the daily planning processes of the system's operation being lower than the required value defined according to Article 9g(4)(9) of the Act of 10 April 1997 – Energy Law, in situations specified in regulation issued pursuant to Article 68.

Article 58. 1. The adjusted capacity obligation of a capacity market unit shall be calculated based on the following:

- 1) volume of the capacity obligation resulting from capacity agreements related to the unit concerned;
- 2) the forecasted:
 - a) capacity demand in the system, in a given system stress event period,
 - b) generation of electricity by physical generation units not covered by the capacity obligation;
- 3) total volume of capacity obligations covered by capacity agreements in the delivery period, with the provisions of paragraph 4 taken into consideration.

2. Along with announcing a system stress event, the operator shall publish information enabling the capacity provider to estimate the adjusted capacity obligation, including the volumes 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 volume of the capacity obligation resulting from capacity agreements related to the unit concerned.

4. While settling the performance of the capacity obligation in its part related to the delivery of capacity during the system stress event, the lack of ability to deliver this part of capacity that has not been delivered as a result of the following shall be taken into consideration:

- 1) grid limitations stemming from operational instructions of the operator or of the distribution system operator;
- 2) a sudden, unpredictable event that is independent of the will of the parties, whose results could not be prevented or counteracted by displaying due diligence, preventing the capacity provider from performing over 40% of his capacity obligation (force majeure).

4a. When settling the capacity obligation performance with respect to delivery of capacity in the system stress event or in the test system stress event by a capacity market unit composed exclusively of physical units actively participating in the system balancing as part of the central balancing mechanism, being an electricity storage, the inability to deliver all or part of this capacity to the system shall be taken into account if it resulted from the orders to change the operation schedule of this unit, issued by the operator.

5. The distribution system operator shall provide the operator with metering data

and other required information concerning physical units for the purpose of testing, verification of documents and information referred to in Article 52(2), verification of the applications referred to in Article 47a, performance of the capacity obligation, including test system stress events and demonstrations, and for the purpose of settlements. The provision of Article 9c(3a) of the Act of 10 April 1997 – Energy Law shall apply accordingly.

6. The operator shall inform the capacity provider and the settlement body about the remuneration due for a given month for the capacity obligation performance, within 7 days after the end of each month.

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

2. The value of the penalty referred to in paragraph 1 shall be calculated as a product of the volume of the capacity obligation that has not been performed, and the unit-rate of the penalty worked out in the manner referred to in regulations issued pursuant to Article 68.

2a. The President of ERO shall calculate the unit-rate of the penalty referred to in paragraph 1 for a given delivery year and shall publish it in the Public Information Bulletin on its website by 15 December of the year preceding a given delivery year.

3. Where the performance of the capacity obligation involves a capacity market unit comprising physical interconnector units:

- 1) if the cross-border exchange capacities made available by the operator at the interconnectors pertaining to a given capacity market unit were at least equal to the capacity obligation of the unit concerned, and the cross-border exchange capacities made available by the capacity provider were lower than the capacity obligation – the penalty shall be imposed upon the capacity provider;
- 2) if the cross-border exchange capacities made available by the capacity provider at the interconnector pertaining to a given capacity market unit were at least equal to the capacity obligation of the unit concerned, and the cross-border exchange capacities made available by the operator were lower than the capacity obligation – the penalty shall be imposed upon the operator;
- 3) in cases other than those referred to in items 1 and 2 - the penalty shall be imposed, in equal parts, upon the operator and the capacity provider.

4. The total value of penalties due from the capacity provider for the failure to

perform the capacity obligation with regard to a given capacity market unit during the delivery year must not exceed twice the product of the highest value (in a given delivery year) of the capacity obligation of the unit that the capacity agreement is concerned with, and the highest of the clearing prices of the capacity auctions pertaining to the delivery year concerned.

5. The total value of penalties due from the capacity provider in a month must not exceed one fifth of the highest permissible total value of penalties calculated in accordance with the provisions of paragraph 4.

6. In the case of penalties referred to in paragraph 3, the provisions of paragraph 4 and 5 shall apply accordingly, with the operator and the capacity provider considered jointly as a single capacity provider.

7. The penalties shall be settled on a monthly basis.

Chapter 2

Remuneration for performance of the capacity obligation and the settlement process

Article 60. 1. The capacity provider shall obtain remuneration for the performance of the capacity obligation following the end of each month of the delivery period. The capacity provider shall issue to the operator, for the performance of the capacity obligation, an invoice, based on the information referred to in Article 58(6).

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

- 1) shall be calculated separately for each capacity market unit;
- 2) shall be calculated as the sum of the products of capacity obligations during hours when a system stress event may occur, as specified in the provisions issued pursuant to Article 68, and corresponding to a given capacity obligation, hourly price determined on the basis of the price of a given capacity obligation and the number of hours in the year in which a system stress event may occur, taking into account the provisions of paragraph 4 and 5 and Article 62.

3. The price of the capacity obligation set forth in the capacity agreement shall be the clearing price of the main auction or an additional auction.

4. The price of the capacity obligation for multiannual capacity agreements shall be indexed, on a yearly basis, based on the average annual consumer price index, as published in an announcement of the President of the Central Statistical Office (Główny Urząd Statystyczny) in the Official Journal of the Republic of Poland (Monitor Polski)

for the year preceding the year in which the capacity fee rates are determined for a given delivery year.

5. The provision of paragraph 4 shall also apply to capacity obligations that were transferred as part of capacity obligation secondary trading, regardless of the number of transactions to which they were subject.

Article 61. 1. Financial settlements related to the capacity market shall be performed by the capacity market settlement body, hereinafter referred to as the “settlement body”.

2. The tasks of the settlement body shall be performed by a company under the name of Zarządca Rozliczeń S.A., as referred to in Chapter 7 of the Act of 29 June 2007 on the Coverage of Costs Incurred by Producers in Connection with Early Termination of Long-Term Contracts for the Sale of Power and Electricity (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, pursuant to a written instruction of the operator containing the list of gross amounts due to the individual capacity providers for a given month.

Article 62. 1. The remuneration for the performance of the capacity obligation, due to a new and a refurbishing generating capacity market unit, shall be reduced by the value of investment-targeted public aid earmarked for the establishment or refurbishment of the unit concerned, granted prior to the commencement of the first delivery period of that unit.

2. The remuneration referred to in paragraph 1 shall be reduced proportionally throughout the duration of the capacity agreement, reducing the capacity obligation price, provided that in the case of a new generating capacity market unit that failed to meet the requirements referred to in Article 52(2), before the start of the first delivery period, for the purpose of the remuneration reduction, the date of presenting the documents and information referred to in Article 52(2) to the operator shall be assumed as the beginning of the capacity agreement duration.

3. The remuneration referred to in paragraph 1 shall be reduced in relation to the entire capacity obligation, for all delivery periods, of a new and refurbished capacity market unit to which it was subject as a result of the capacity auction.

4. The capacity obligation price determined taking into account paragraph 3 shall

also apply to capacity obligations that were transferred as part of secondary trading of capacity obligation to another capacity market unit, including the capacity market unit of other capacity provider, regardless of the number of transactions to which they were subject.

5. The remuneration referred to in paragraph 1 shall be reduced on the basis of the information referred to in Article 52(2)(4), taking into account paragraph 6.

6. If, between the submission of the information referred to in Article 52(2)(4) and the start of the delivery period, the capacity provider was granted the public aid referred to in paragraph 1, the capacity provider shall, prior to the start of the delivery period, update the information referred to in Article 52(2)(4). If the update referred to in the first sentence is made, the provisions of paragraphs 1 – 5 shall apply accordingly.

Article 63. 1. The remuneration for the performance of capacity obligation for a capacity market unit comprising a generating unit being a multi-fuel combustion plant within the meaning of Article 2(15) of the Act of 20 February 2015 on renewable energy sources and a hybrid system within the meaning of Article 2(34) of that Act, shall be corrected in connection with the receipt of certificates of origin and covering the negative balance within the meaning of the aforementioned Act..

1a. Remuneration for the performance of the capacity obligation, due to a generating capacity market unit comprising a co-generation unit in the meaning of the Act of 14 December 2018 on Promoting Electricity from Highly Efficient Co-generation Sources (Journal of Laws of 2019, item 42), shall be corrected in connection with the receipt of the following:

- 1) guaranteed bonus, or
 - 2) individual guaranteed bonus, or
 - 3) co-generation bonus, or
 - 4) individual co-generation bonus
- in the meaning of the Act concerned.

2. The correction referred to in paragraphs 1 and 1a shall be made by reducing the capacity obligation for which the remuneration is due by the capacity volume resulting from:

- 1) the guarantees of origin granted for the period concerned, in the meaning of the Act referred to in paragraph 1, or

- 1a) an approved application to cover the negative balance referred to in Article 93(2)(3) of the Act mentioned in paragraph 1, or
- 2) volume of electricity generated in the unit concerned, covered by the capacity obligation, with regard to which the bonus in the meaning of the Act referred to in paragraph 1a has been obtained.

2a. The correction referred to in paragraphs 1 and 1a must not be greater than the remuneration stemming from the volume of the capacity obligation and the price of the capacity obligation.

3. Remuneration for the performance of the capacity obligation, due to the capacity market unit referred to in paragraphs 1 and 1a, shall be paid upon submission of information about:

- 1) the guarantees of origin granted for the period concerned, as referred to in the Act referred to in paragraph 1,
- 1a) volume of electricity covered by the approved application for covering the negative balance referred to in Article 93(2)(3) of the Act mentioned in paragraph 1,
- 2) the bonus received for the period concerned, as referred to in the Act referred to in paragraph 1a

– which are required for calculation of the correction value.

4. The operator or the settlement body may apply to the President of ERO for information allowing it to verify the information referred to in paragraph 3.

Article 64. Remuneration for the performance of the capacity obligation, due to a capacity market unit comprising:

- 1) physical cross-border unit – shall be paid upon presentation by the transmission system operator, relevant for the location of the unit, of metering and settlement data for a given period or other information allowing for settlements or upon obtaining by the operator of data necessary for settlements;
- 2) a physical interconnector unit – shall be divided equally between the capacity provider and the operator.

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

Article 66. 1. The capacity provider who has delivered, in a given system stress

event, capacity exceeding the adjusted capacity obligation of the capacity market unit located in the system, shall receive a bonus originating from redistribution of the funds received as penalties for the failure to perform the capacity obligation, if such penalties have been imposed, hereinafter referred to as the “bonus”.

2. The bonus shall be also received by the capacity provider who has delivered, during a system stress event, capacity through a capacity market unit that has been certified for a given delivery year, but has not concluded a capacity agreement with regard to this unit, covering the period of time in which the system stress event took place.

3. Bonuses shall be settled in periods equal to the calendar year.

4. The bonus due to the capacity provider shall be calculated proportionally to the surplus capacity delivered by that provider and to the value of penalties for the failure to perform capacity obligations imposed during the settlement period referred to in paragraph 3.

5. The sum of bonuses due to all capacity providers for the delivery of capacity exceeding the capacity obligation must not exceed the total amount of penalties for the failure to perform the capacity obligation in a given delivery year, and the unit rate price of capacity supplied over the capacity obligation, relied upon to calculate the bonus amount, must not be greater than twice the unit rate of the penalty for the failure to perform the capacity obligation in a given delivery period.

6. Upon the end of each calendar year, the capacity provider shall issue to the operator invoices for bonuses due in a given year, separately for individual capacity market units of that capacity provider, on the basis of the operator’s information submitted to that provider by the end of the month following the end of the year.

7. The bonus shall be paid to the capacity provider by the settlement body, pursuant to a written instruction of the operator containing the list of gross amounts due to the individual capacity providers for a given calendar year.

Article 67. 1. Upon the end of each quarter of the delivery year, the capacity provider who was a party to the capacity agreement shall demonstrate, to the operator, the ability to perform the capacity obligation, with regard to each of the capacity market units that the capacity agreement is concerned with.

2. The demonstration of the ability to perform the capacity obligation shall consist in indicating, to the operator, the number of hours in each quarter, as specified in

regulations issued pursuant to Article 68, in which the capacity market unit was providing capacity to the system (demonstration).

3. The following shall be considered to be the delivery of capacity to the system, for the purpose of the demonstration:

- 1) in the case of a demand side response capacity market unit - reduction in demand for capacity from the grid, in an amount that is not lower than the highest capacity obligation of that unit in the delivery quarter;
- 2) in the case of a generating capacity market unit - generation of electricity, in an amount that is not lower than the highest capacity obligation of that unit in the delivery quarter.

4. The capacity provider shall refund, to the operator, the remuneration for the performance of the capacity obligation, due pursuant to the agreement concerning the capacity market unit with regard to which the capacity provider has failed to perform the demonstration pursuant to paragraphs 1-3. The obligation to refund the remuneration shall cover remuneration due for the entire quarter for which no demonstration has been performed by the capacity provider.

5. Regardless of the obligations specified in paragraphs 1 – 3, the operator may announce a test system stress event for selected capacity market units covered by the capacity obligation. In the case of a positive result of the test system stress event, the operator shall cover, upon the request of the capacity provider, the justified expenses relating to its performance for the capacity market unit, whereas the amount of compensation:

- 1) may not be higher than the equivalent of the weekly remuneration of the capacity provider for this capacity market unit – in the case of a generating capacity market unit, or
- 2) is equal to the value of the weekly remuneration of the capacity provider for this capacity market unit – in the case of a demand side response capacity market unit.

6. The results of the test system stress event shall be, in relation to the capacity provider with regard to which the test system stress event was announced by the operator:

- 1) positive, if the capacity delivered by the capacity market unit is not less than the full capacity obligation of that unit in the test system stress event, taking into account Article 58(4a), or
- 2) negative in a situation other than that referred to in item 1.

7. The operator may announce a test system stress event with regard to one capacity market unit not more frequently than once per each quarter. Where the result of the test system stress event is negative, the operator may announce subsequent test system stress events during the same quarter, upon readiness being reported by the capacity provider, until a positive result has been achieved.

8. Where a negative result of the test system stress event has been obtained, the capacity provider shall pay, on each occasion, a penalty for the failure to perform the capacity obligation. The provisions of Article 59(2) and (4)-(7) shall apply accordingly.

9. No remuneration shall be due to the capacity provider for the performance of the capacity obligation for the period of time between the stress test concluded with a negative result and the date on which a notice is received from the capacity provider informing about the readiness of the capacity market unit to perform such obligation.

10. Lack of remuneration for the failure to perform the capacity obligation during the period of time referred to in paragraph 9 shall not release the capacity provider from the obligation to provide capacity during the system stress event.

11. The operator shall immediately inform the settlement body about the capacity provider's failure to demonstrate the capacities or to perform the tests referred to in paragraphs 2 and 5.

Article 67a. 1. No later than 90 calendar days after the end of each delivery year, the capacity provider shall, with respect to each capacity market unit certified for the previous delivery year, other than the capacity market unit consisting of physical interconnector units, submit to the operator a declaration on:

- 1) compliance with the emission limit by a given capacity market unit in a given delivery year, or
- 2) failure to comply with the emission limit in a given delivery year by a given capacity market unit.

2. The declaration referred to in paragraph 1(1) or (2) shall be submitted by the capacity provider being a natural person or by persons representing the capacity provider or acting on its behalf, under pain of criminal liability for making false statements. The entity submitting the declaration shall include a clause reading as follows: "I am aware of the criminal liability for making a false statement under Article 233 § 6 of the Act of 6 June 1997 – Penal Code." This clause replaces the authority's instruction on criminal liability for making false statements.

3. In relation to a capacity market unit comprising at least one generating unit in which more than one fuel is used, waste is thermally treated or carbon dioxide is captured and transferred, the capacity provider shall accompany the declaration referred to in paragraph 1(1) with a confirmation of compliance with the facts of the information contained in the declaration issued by an entity accredited to the extent referred to in paragraph 1a or 1b of Annex I of Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers under Directive 2003/87/EC of the European Parliament and of the Council (Official Journal of EU L 334 of 31 December 2018, p. 94, as amended).

4. In relation to a capacity market unit other than that indicated in paragraph 3, the capacity provider may attach to the declaration referred to in paragraph 1(1) a confirmation of compliance with the facts of the information contained in the declaration issued by an entity accredited to the extent referred to in paragraph 1a or 1b of Annex I of Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers under Directive 2003/87/EC of the European Parliament and of the Council.

5. A failure to submit the declaration referred to in paragraph 1(1) within the time limit specified in paragraph 1 or submission of the declaration contrary to the requirements specified in the capacity market rules referred to in Article 83 shall be equivalent to the submission of the declaration referred to in paragraph 1(2).

6. The operator may request the capacity provider to provide explanations concerning the submitted declarations referred to in paragraph 1 in the manner and within the time limit specified in the capacity market rules referred to in Article 83.

7. As part of the request referred to in paragraph 6, the operator may request the capacity provider to attach the confirmation referred to in paragraph 3 or 4.

8. In the case of submission of the declaration referred to in paragraph 1(2), the capacity provider shall, with respect to a given capacity market unit:

- 1) return the bonus paid for the delivery year which the declaration regards, if the bonus has been paid;
- 2) not receive the bonus for the delivery year which the declaration regards, if the bonus has not been paid;
- 3) return the remuneration paid for the performance of the capacity obligation in the delivery year which the declaration regards– in the scope of the remuneration which has been paid;

- 4) not receive any remuneration for the performance of the capacity obligation in the delivery year which the declaration regards– in the scope of the remuneration which has not been paid.

9. The provisions of paragraph 8(3) and (4) shall not apply to the remuneration due for the performance of the capacity obligation which arose no later than on 31 December 2019 as a result of the capacity auction, also if this capacity obligation, in whole or in part, was transferred to another capacity market unit as a result of transactions on the secondary market, regardless of the number of transactions to which it was subject.

10. The funds raised in the cases referred to in paragraph 8(1) and (2) shall be used to increase the bonuses to be paid for the following delivery year.

Article 68. 1. The minister relevant for energy shall determine, by regulation, detailed conditions for and the manner of performance of the capacity obligation, its settlement and demonstration, as well as the detailed terms for the conclusion of secondary market transactions, taking into consideration equal and non-discriminatory treatment of capacity providers, application of incentives and penalties ensuring the performance of the capacity obligations, security of the supply of electricity to end users, efficient conclusion of the transactions and aiming to mitigate any manipulations and the abuse of their market position by the capacity providers.

2. The regulation referred to in paragraph 1 shall determine the following:

- 1) the security standard applicable to the supply of electricity to end users, understood as the permissible expected interruption in the supply of electrical capacity to end users, expressed in hours per year;
- 2) the procedure for announcing a system stress event and the cases in which the operator may not announce a system stress event despite the surplus capacity available under the daily planning processes of the system's operation being lower than the required value;
- 3) days and hours of potential system stress events;
- 4) the manner of determining the capacity provided as a result of temporary reduction of the capacity taken off from the grid by demand side response capacity market units;
- 5) the manner in which demonstration is conducted;
- 6) requirements applicable to the admissibility of trading of capacity obligations and of their reallocation, including the minimum value of such obligation that may be

transferred;

- 7) the manner in which unit penalty rates for the failure to perform the capacity obligation are calculated.

3. The standard of security of electricity supply to end users referred to in paragraph 2(1) is the reliability standard referred to in Article 25(2) of Regulation 2019/943.

Chapter 3

Capacity fee

Article 69. 1. The operator shall collect a fee for the payment of remuneration for the performance of capacity obligations, corresponding to the costs of the purchased capacity obligation and the justified costs referred to in Article 77(4) and (9), hereinafter referred to as the “capacity fee”.

2. The operator shall collect the capacity fee from:

- 1) the end user connected directly to the transmission grid;
- 2) distribution system operator, hereinafter referred to as the “capacity fee payer”;
- 3) energy company pursuing business activity in the field of transmitting or distributing electricity, not being a capacity fee payer, connected directly to the transmission grid;
- 4) energy company generating electricity and connected directly to the transmission grid;
- 5) an energy company pursuing business activity in the field of electricity storage, connected directly to the transmission grid.

3. The capacity fee payer shall collect the capacity fee from the following entities directly connected to its distribution grid:

- 1) end user;
- 2) energy company pursuing business activity in the field of transmitting or distributing electricity, not being a capacity fee payer;
- 3) energy company generating electricity;
- 4) an energy company pursuing business activity in the field of electricity storage.

4. An energy company pursuing business activity in the field of transmitting or distributing energy, not being a capacity fee payer, shall collect the capacity fee from the following entities directly connected to its distribution grid:

- 1) end user;
- 2) energy company generating electricity;

- 2a) an energy company pursuing business activity in the field of electricity storage;
- 3) energy company pursuing business activity in the field of transmitting or distributing electricity, not being a capacity fee payer.

5. An energy company generating electricity shall collect the capacity fee from the following entities that are directly connected to the devices, installations or grids of that company:

- 1) end user;
- 2) energy company rendering electricity transmission or distribution services, not being a capacity fee payer.

5a. An energy company pursuing business activity in the field of electricity storage shall collect a capacity fee from the following entities connected directly to the equipment, systems or grids of that company:

- 1) end user;
- 2) an energy company providing electricity transmission or distribution services, which is not a capacity fee payer.

6. An energy company pursuing business activity in the field of electricity generation, storage, transmission or distribution shall be considered as the end user in the part in which, under the agreement with the energy company, it receives or consumes electricity from the equipment, systems or grids of the energy company and consumes it to meet its own needs. Electricity used for the purpose of generating, storing, transmitting or distributing electricity shall not be deemed electricity used to meet the own needs of the company.

7. The company referred to in paragraph 6 shall pay the capacity fee to the company to whose devices, installations or grids it is connected.

8. The operator, the capacity fee payer and the energy company pursuing business activity in the field of transmitting, distributing or generating electricity, not being a capacity fee payer, shall take into consideration, in its tariff for the services consisting in transmitting, distributing or selling electricity, the capacity fees referred to in Article 70, as well as the conditions pursuant to which these are applied.

Article 70. The capacity fee rate for end users shall be determined as the rate applied to the volume of electricity drawn from the grid during selected hours of the day, expressed in PLN per kWh of electricity.

Article 70a. 1. For the purpose of calculating the amount of the capacity fee to be

paid by end users, depending on the difference between the average electricity consumption during the hours referred to in Article 74(4)(2) in the qualification period, and the average electricity consumption during hours other than the hours referred to in Article 74(4)(2), on working days from Monday to Friday, excluding public holidays, in the qualification period, the following groups of end users shall be distinguished:

- 1) end user K1 – where the difference is less than 5%;
- 2) end user K2 – where the difference is not less than 5% and less than 10%;
- 3) end user K3 – where the difference is not less than 10 % and less than 15 %;
- 4) end user K4 – where the difference is not less than 15% or if the volume of electricity drawn from the grid and consumed during hours other than the hours referred to in Article 74(4)(2), on working days from Monday to Friday, excluding public holidays, in the qualification period, is 0.000 MWh.

2. The difference between the average electricity consumption during the hours referred to in Article 74(4)(2) in the qualification period, and the average electricity consumption during hours other than the hours referred to in Article 74(4)(2), on working days from Monday to Friday, excluding public holidays, in the qualification period, shall be calculated according to the following formula:

$$\Delta s = \left(\frac{\frac{\sum_{n=1}^N Z_{S_n}}{N}}{\frac{\sum_{m=1}^M Z_{P_{S_m}}}{M}} - 1 \right) \cdot 100\%$$

where the individual symbols mean:

Δs – the difference between the average electricity consumption during the hours referred to in Article 74(4)(2) in the qualification period, and the average electricity consumption during hours other than the hours referred to in Article 74(4)(2), on working days from Monday to Friday, excluding public holidays, in the qualification period,

n – hour falling during the hours referred to in Article 74(4)(2), in the qualification period,

N – number of hours falling during the hours referred to in Article 74(4)(2), in the qualification period,

m – hour falling during the hours other than those referred to in Article 74(4)(2), on business days from Monday to Friday, excluding public holidays, in the qualification period,

M – number of hours falling during the hours other than those referred to in Article 74(4)(2), on working days from Monday to Friday, excluding public holidays, in the qualification period,

Z_{Sn} – volume of electricity drawn from the grid and consumed by the end user during hour n , expressed in MWh, with accuracy to three decimal places,

Z_{PSm} – volume of electricity drawn from the grid and consumed by the end user during hour m , expressed in MWh, with accuracy to three decimal places.

3. The qualification period referred to in paragraphs 1 and 2 shall be 24 hours from 12:00 a.m. to 11.59 p.m. inclusive.

4. The amount of the capacity fee charged to end users shall be calculated in accordance with the following formula:

$$W_{OM} = A \cdot Z_k \cdot S_{OM}$$

where the individual symbols mean:

W_{OM} – amount of the capacity fee charged to end users, expressed in PLN, with accuracy to two decimal places,

A – the factor referred to in paragraph 5,

Z_k – volume of electricity drawn from the grid and consumed in the qualification period by the end user during the hours falling in the hours referred to in Article 74(4)(2), expressed in MWh, with accuracy to three decimal places,

S_{OM} – capacity fee rate referred to in Article 74(11).

5. Factor A is:

- 1) 0,17 for end users K1 (AK1);
- 2) 0,50 for end users K2 (AK2);
- 3) 0,83 for end users K3 (AK3);
- 4) 1 for end users K4.

Article 70b. 1. The end users shall be divided into the groups referred to in Article 70a (1) separately for each:

- 1) metering point of a given end user, or
- 2) place in a device or grid where the volume of electricity is measured or determined which is not a metering point, for which a capacity fee is calculated pursuant to Article 69(5), taking into account paragraph 2.

2. An energy company pursuing business activity in the field of transmission, distribution or generation of electricity, at the request of the end user, shall connect the points referred to in paragraph 1(1) or (2).

3. Where the points are connected in accordance with paragraph 2, the groups referred to in Article 70a(1) shall be classified on the basis of the sum of the electricity consumption at all points connected.

4. The application referred to in paragraph 2 may relate only to the points referred to in paragraph 1(1) or (2):

- 1) interconnected using the grid or devices of a given end user, without using the grids of other energy companies, and
- 2) in the grid of a given energy company pursuing business activity in the field of transmission, distribution or generation of electricity to whose devices or grid the end user is directly connected.

5. In the case of metering points in the distribution grid covered by the comprehensive agreement referred to in Article 5(3) of the Act of 10 April 1997 – Energy Law, the application referred to in paragraph 2 may refer only to the metering points indicated in the comprehensive agreement concluded with a single electricity seller.

6. If the points referred to in paragraph 1(1) or (2), of a single end user are located in the grids of more than one energy company pursuing business activity in the field of transmission, distribution or generation of electricity to whose devices or grid the end user is directly connected, the end user may submit the application referred to in paragraph 2 to each of the companies.

7. The application referred to in paragraph 2 shall include:

- 1) the name and address of the end user;
- 2) the number in the Register of Entrepreneurs in the National Court Register (KRS), the Tax Identification Number (NIP) or the Personal Identification Number (PESEL) – in the case of an end user who is a natural person;
- 3) a list of points referred to in paragraph 1(1) or (2), interconnected using the grid or devices of the end user, without using the grid of other energy companies.

8. The application referred to in paragraph 2 shall be accompanied by a declaration on the fulfilment of the condition referred to in paragraph 4(1) and (2), reading as follows: “I declare that I am familiar with and I meet the conditions specified in Article 70b(4)(1) and (2) of the Act of 8 December 2017 on the capacity market.”

9. The application referred to in paragraph 2 may be submitted in writing or electronically using the data communication system in which the user was authenticated using a trusted profile, personal profile or other electronic identification means issued in the electronic identification system connected to the national electronic identification node referred to in Article 21a(1)(2)(a) of the Act of 5 September 2016 on trust services and electronic identification (Journal of Laws of 2020, items 1173 and 2320), adequately to the security level of the electronic identification means required for the services provided in this system, data verified by means of a qualified electronic signature certificate, if such data allow for identification and authentication required for the performance of the online service, or other technologies, if they are made available in this system.

10. An energy company pursuing business activity in the field of transmission, distribution or generation of electricity shall examine the application referred to in paragraph 2 within 30 days from the date of receipt of a complete and correctly submitted application.

11. If the application referred to in paragraph 2 contains incorrect information or does not contain all the information referred to in paragraph 7 or the declaration referred to in paragraph 8, the energy company pursuing business activity in the field of transmission, distribution or generation of electricity shall request the end user to supplement the application within 14 days from the date of delivery of the request. The provision of paragraph 9 shall apply accordingly.

12. An energy company pursuing business activity in the field of transmission, distribution or generation of electricity may refuse to connect the points referred to in paragraph 1(1) or (2), if the application referred to in paragraph 2 has not been supplemented within the time limit referred to in paragraph 11.

13. In accordance with paragraph 2, the points referred to in paragraph 1(1) or (2) shall be connected on the day following the date of delivery of the complete application. The points referred to in paragraph 1(1) or (2), connected in accordance with paragraph 2, shall be specified respectively in the electricity distribution service agreement referred to in Article 5(1) of the Act of 10 April 1997 – Energy Law, in the comprehensive agreement referred to in Article 5(3) of the Act or, only in the case of the points referred to in paragraph 1(2), in the electricity sales agreement referred to in Article 5(1) of that Act.

Article 71. (repealed)

Article 72. (repealed)

Article 73. (repealed)

Article 74. 1. The total cost of the capacity market in a given delivery year, shall be worked out, for the purpose of calculating the capacity fee rates, based on the following formula:

$$P_C = P_{AG} + P_{AD} + P_X - B,$$

where the individual symbols shall have the following meanings:

- K_C – total cost of the capacity market in a given delivery year,
- K_{AG} – sum of the products of capacity obligations and main auction clearing prices for a given delivery year,
- K_{AD} – sum of the products of capacity obligations and relevant additional auction clearing prices for a given delivery year,
- K_R – costs referred to in Article 77(3) and (4),
- B – forecast balance of the capacity fee account, as at 31 December of a given year, without taking into consideration revenues on penalties for the failure to perform the capacity obligation in a given year.

2. The settlement body shall submit, to the President of ERO, by 31 August of each year, information on:

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

3. The President of ERO shall calculate the capacity fee rates in force for a given calendar year, exclusive of the goods and services tax due, in the meaning of the Act on the Goods and Services Tax of 11 March 2004.

4. The President of ERO shall publish, in the Bulletin of the Energy Regulation Office, by 30 September of each year:

- 1) the capacity fee rates for the following year;
- 2) the selected hours of the 24-hour period in which peak demand for capacity is observed in the system, specified separately for each quarter of the delivery year - to enable the calculation of the capacity fee due from the customers however, for periods prior to 1 January 2028, only for the purpose of calculating the capacity fee paid by the end users referred to in Article 89a(1)(2).

5. The President of ERO may determine different capacity fee rates for individual quarters of the delivery year for the end users, taking into account seasonal variability in the capacity demand in the system, whereas for the periods prior to 1 January 2028 such rates may be determined only for the end users referred to in Article 89a(1)(2).

6. (repealed)

7. (repealed)

8. (repealed)

9. (repealed)

10. The capacity market cost for end users shall be equal to the total capacity market cost referred to in paragraph 1.

11. The capacity fee rates for the end users shall be calculated by the President of ERO, taking into account the capacity market cost for the end users and the volume of electricity drawn from the grid and consumed by these users during the selected hours of the day referred to in paragraph 4(2), taking into account Article 70a and Article 89a, in accordance with the following formula:

$$S_{OM} = \frac{K_P}{A_{K1} \cdot Z_{K1} + A_{K2} \cdot Z_{K2} + A_{K3} \cdot Z_{K3} + Z_{K4}}$$

where the individual symbols mean:

S_{OM} – capacity fee rates for end users,

K_P – capacity market cost for end users, for the year or quarter, respectively,

A_{K1} – the factor referred to in Article 70a(5), for end users K1,

Z_{K1} – volume of electricity drawn from the grid and consumed by end users K1 during the hours referred to in paragraph 4(2),

A_{K2} – the factor referred to in Article 70a(5), for end users K2,

Z_{K2} – volume of electricity drawn from the grid and consumed by end users K2 during the hours referred to in paragraph 4(2),

A_{K3} – the factor referred to in Article 70a(5), for end users K3,

Z_{K3} – volume of electricity drawn from the grid and consumed by end users K3 during the hours referred to in paragraph 4(2),

Z_{K4} – volume of electricity drawn from the grid and consumed by the end users K4 during the hours referred to in paragraph 4(2).

12. The volumes of electricity referred to in paragraph 11 and in Article 89b(2), drawn from the grid and consumed by the end users K1–K4, during the hours referred to in paragraph 4(2), shall be determined on the basis of data concerning the year

preceding the year of determining the capacity fee rates, taking into account the rules of the division of end users into groups K1–K4, which shall apply in the year for which the capacity fee rates are determined.

Article 75. 1. The companies referred to in Article 69(2)(2)-(4) shall submit, to the operator, information on the sum of the capacity fees due, with the scope of such information and the deadlines for their submission corresponding to those referred to in regulations issued pursuant to Article 76.

2. The operator:

- 1) shall collect, from the entities referred to in Article 69(2), the capacity fee in the amount due, reduced by the amounts receivable as the capacity fee applicable to previous settlement periods, written down, in a given settlement period, as irrecoverable amounts in the meaning of Article 16(2) of the Act on Corporate Income Tax dated 15 February 1992 (Journal of Laws of 2016, item 1888, as amended³⁾);
- 2) shall collect the funds originating from the capacity fee.

3. The entities referred to in Article 69(2) shall submit, to the operator, the funds originating from the capacity fee, due for a given settlement period, in a manner and within deadlines specified in regulations issued pursuant to Article 76.

4. Where the energy company that generates electricity is connected, simultaneously, to the transmission grid and the distribution grid of the capacity fee payer, the funds collected from the capacity fee shall be paid to the operator.

5. The end user, the energy company pursuing business activity in the field of transmitting or distributing electricity, not being a capacity fee payer, and the electricity undertaking generating electricity, all connected to the distribution grid, shall transfer capacity fee funds to the capacity fee payer, within the deadline set forth in regulations issued pursuant to Article 76.

6. The operator and the capacity fee payer shall draw up and submit, to the President of ERO, written information for each quarter in which the capacity fee is collected, containing the following data:

- 1) (repealed)

³⁾ Amendments to the consolidated wording of the aforementioned Act have been published in the Journal of Laws of 2016, item 1926, 1933 and 1948, as well as of 2017, item 60, 624, 648, 1089, 1448, 1566, 2056, 2175 and 2201.

- 2) the volume of electricity drawn from the grid by end users, during selected hours of the day, taking into account the division of end users into groups K1–K4 referred to in Article 70a(1),
 - 2) value of the capacity fee due and paid in a given quarter by the entities obliged to pay the capacity fee
- within the month following the end of the quarter to which the information pertains.

7. The energy company pursuing business activity in the field of transmitting or distributing electricity, not being a capacity fee payer, and the energy company generating electricity, all connected to the distribution grid, shall provide the capacity fee payer with information on the total capacity fee due, and information referred to in paragraph 6, within the deadlines set forth in regulations issued pursuant to Article 76.

8. The operator and the capacity fee payer shall provide the President of ERO with information on the volume of electricity referred to in Article 74(12), in accordance with the provisions issued pursuant to Article 76.

Article 76. The minister relevant for energy shall specify, in the form of a regulation, the detailed manner of charging the capacity fee, including:

- 1) deadlines and method for providing the operator with the funds for the capacity fee,
- 2) the scope and deadline of providing the operator and the capacity fee payer with information, including information on the total amount of the capacity fees due,
- 3) settlement periods between the operator, capacity fee payers and other entities obliged to pay the capacity fee, respectively,
- 4) the method for determining the hours of the day with the maximum capacity demand in the system for the purpose of calculating the capacity fee due from end users, excluding the end users referred to in Article 89a(1)(1),
- 5) scope and deadline of providing the President of ERO with the information necessary for calculation of the capacity fee rates

– taking into account the provision of efficient acquisition of funds from the capacity fee and encouraging end users to reasonably use electricity during the day..

Article 77. 1. The capacity fee funds collected, as well as the retained collaterals and penalties, with the exception of penalties referred to in Article 85, refunds of remuneration for the performance of the capacity obligation referred to in Article 67(4) funds granted pursuant to Article 67a(8) and interest on those funds shall constitute the

property of the operator.

2. The operator shall entrust the settlement body with the funds referred to in paragraph 1, collected for a given settlement period, less the goods and services tax due, plus the amount constituting the equivalent of the goods and services tax, as identified in the written payment instruction referred to in Article 61(3), by transferring them to a separate bank account kept for the settlement body, hereinafter referred to as the “capacity fee account”, by the end of the month following the end of the settlement period. Where the amount of the goods and services tax identified in the invoices of capacity providers is greater than the amount of the goods and services tax due on the funds referred to in paragraph 1, the difference shall be transferred, by the operator, to the capacity fee account within 3 months from the end of the settlement period.

3. The settlement body shall manage the capacity fee funds and other funds provided for in the Act that he has been entrusted with and that are deposited in the capacity fee account, in accordance with the principles set forth in Article 54(1) of the Act of 29 June 2007 on the Coverage of Costs Incurred by Producers in Connection with Early Termination of Long-Term Contracts for the Sale of Power and Electricity, and shall ensure the financial liquidity of settlements related to capacity agreements, and may assume debt to fund the payment of remuneration for the performance of the capacity obligation. The debt, including the cost of its servicing, shall be settled with the use of the funds deposited in the capacity fee account.

4. The settlement body shall collect, in exchange for the management of capacity fee funds, remuneration equal to the reasonable costs it has borne in relation to that activity, comprising the costs of maintaining the capacity fee account, the cost of financial settlements on the capacity market and the costs resulting from managing financial liquidity on the capacity market. The said remuneration shall be financed with the use of the capacity fee funds.

5. Funds deposited in the transitional fee account referred to in Article 17(3) of the Act referred to in paragraph 3 may be earmarked for covering the shortage of funds on the capacity fee account, if this does not result in the failure to settle the obligations provided for in the Act referred to in paragraph 3. The funds taken from the transitional fee account shall be refunded in full to the transitional fee account.

6. The activities referred to in paragraphs 3 and 5 shall not be deemed to be a loan agreement in the meaning of the Civil Code Act of 23 April 1964 (Journal of Laws of 2017, item 459, 933 and 1132) and of the Civil Law Transactions Tax Act of 9

September 2000 (Journal of Laws of 2017, item 1150) and shall not be subject to that tax.

7. The financial surplus resulting from the difference between the auction clearing price and the price for capacity market units consisting of physical cross-border units within a single zone shall be used, by the operator, in the manner specified in Article 19(2) and (3) of Regulation 2019/943 and to cover the costs of the transmission system operator directly connected to the system, with which the agreement referred to in Article 6(4) was concluded.

8. The revenue on remuneration referred to in Article 64(2) shall be used, by the operator, in the manner referred to in Article 16(6) of the Regulation referred to in paragraph 7.

9. Reasonable costs relating to the performance of the test system stress event to be covered by the operator in accordance with Article 67(5), as well as interest paid to capacity providers and pre-auction participants, shall be covered from the capacity fee.

Article 78. 1. The funds obtained from the capacity fee, including the remuneration of the settlement body referred to in Article 77(4) and the interest on the funds from the capacity fee collected on the capacity fee account, shall not be the revenue of the settlement body within the meaning of the Corporate Income Tax Act of 15 February 1992.

2. The funds transferred by the settlement body to the capacity provider under this Act and the expenses and costs of the settlement body financed from the capacity fee funds shall not be business expenses within the meaning of the Act referred to in paragraph 1 on the behalf of the settlement body.

3. The operator shall establish a provision, recognised as an expense, for the funds due as the capacity fee, less the goods and services tax due. The provision shall be established accordingly, at the date at which the capacity fee becomes due.

4. The provision referred to in paragraph 3 shall be also increased by statutory interest on capacity fee funds deposited in a separate account, if the said interest constitutes the operator's revenue in the meaning of the Act referred to in paragraph 1.

5. Reduction or dissolution of the provision referred to in paragraph 3 shall take place in the month in which:

- 1) the operator considers, as a tax deductible expense in the meaning of the Act referred to in paragraph 1, the remuneration for the performance of the capacity

obligation or the bonus referred to in Article 66(1), in the amount of that remuneration of bonus, less the goods and services tax due, or

2) the reasons behind its establishment shall cease to exist.

6. The equivalent of the reduced or dissolved provision referred to in paragraph 3 shall be deemed to constitute, on the date on which the reduction or dissolution is performed, the operator's revenue in the meaning of the Act referred to in paragraph 1.

Article 78a. For the purpose of preparing the report on the granted public aid other than public aid in agriculture or fisheries referred to in Article 32(1) of the Act of 30 April 2004 on the procedural issues concerning state aid, it is assumed that the date of granting public aid to capacity providers is the date of providing the written instruction referred to in Article 61(3).

Article 78b. If the Court or the Court of Justice of the European Union annuls the decision of the European Commission on the compatibility of the public aid provided for in Article 60(1) with the internal market in the case referred to in Article 24a(9) of the Act of 30 April 2004 on the procedural issues concerning state aid, the funds remaining on the account referred to in Article 24a(5) of the Act shall be transferred to the capacity fee account.

SECTION IV

Resolution of disputes and capacity market regulations

Chapter 1

Resolution of disputes

Article 79. In the case of disputes related to:

- 1) certification processes, in the scope of:
 - a) operator's refusal to enter a physical unit into the register,
 - b) operator's refusal to issue the certificate, or a situation in which a certificate has been issued stating parameters different than those requested in the certification application,
 - c) unequal treatment of the owners of physical units or of the entities authorised thereby, or of capacity providers,
 - d) performance, by the operator, of the certification processes in violation of the legal regulations or of the capacity market regulations referred to in Article

83,

- 2) capacity auction, in the scope of:
 - a) behaviour of the capacity auction participants that is in violation of the legal regulations or of the capacity market regulations referred to in Article 83,
 - b) capacity auction being conducted by the operator in violation of the legal regulations or capacity market regulations referred to in Article 83,
 - c) failure to allow a capacity market unit to participate in the capacity market auction,
 - 3) trading of the capacity obligation on the secondary market, including an objection reported by the operator with regard to a secondary market transaction,
 - 4) details entered into the register or details whose registration has been refused,
 - 5) violation, by the operator, of the rules applicable to announcing the system stress event,
 - 6) pre-auction,
 - 7) refusal to accept the application referred to in Article 70b(2);
- shall be settled, upon request of a party, by the President of ERO, by way of a decision.

Article 80. The request for resolving a dispute shall be submitted with the President of ERO upon completing the complaint handling procedure set forth in the capacity market regulations, provided that the regulations allow such a complaint to be filed in the case concerned. The submission of the request shall not suspend the activities taken on the capacity market that the dispute is concerned with, and resolution of the dispute shall not violate the rights or obligations of the capacity market participants stemming from current or completed activities undertaken on the capacity market.

Article 81. 1. A party may appeal against the decisions of the President of ERO issued pursuant to the present Act, to the District Court in Warsaw - Competition and Consumer Protection Court, within 14 days from the said decision being served.

2. The proceedings concerning an appeal against the decision of the President of ERO shall be held in accordance with the provisions of the Code of Civil Procedure Act of 17 November 1964 (Journal of Laws of 2016, item 1822, as amended⁴⁾) concerning proceedings in cases related to energy regulation issues.

⁴⁾ Amendments to the consolidated wording of the aforementioned Act have been published in the Journal of Laws of 2016, items 1823, 1860, 1948, 2138, 2199, 2260 and 2261, as well as of 2017, items 67, 85, 187, 768, 933, 1133, 1136, 1452, 1475, 1596, 1727, 1883 and 2180.

Chapter 2

Capacity Market Regulations

Article 82. The operator shall draw up the capacity market regulations setting forth detailed principles of cooperation between capacity market participants.

Article 83. The capacity market regulations shall set forth the conditions of cooperation between the operator and the remaining capacity market participants, defining, in particular:

- 1) organisation and course of the certification process, including:
 - a) detailed list and form of information submitted to the operator,
 - b) the manner in which information is exchanged between capacity market participants,
 - c) the mode for submitting and reviewing complaints concerned with the operator's decisions,
 - d) scope of technical and economic data submitted for the purpose of the certification process, and the manner in which such data are calculated,
 - e) templates of forms and documents used,
 - f) the manner of cooperation between the operator of the distribution system to whose grid the physical units are connected and the operator,
 - g) detailed certification time schedule,
 - h) deadline by which defects or formal deficiencies of the application referred to in Article 13(1) and Article 22(1) need to be eliminated,
 - i) the manner in which the parameters of a physical generating unit, a physical demand side response unit or a capacity market unit are verified,
 - j) guidelines concerning the operational plan presented by a planned demand side response unit;
- 2) detailed conditions for holding the capacity auction, including:
 - a) the auction conclusion algorithm,
 - b) receiving access to and using the dedicated ICT system, including technical requirements for the users of such a system,
 - c) the manner of placing bids and the course of the capacity auction;
- 3) detailed scope of information contained in the register;
- 4) conditions pursuant to which the capacity market participants may use the register, including:

- a) the form of data recorded and processed in the register,
 - b) technical requirements for the register users,
 - c) the manner in which access to the register is obtained, in particular definition of the scope of data available to the individual capacity market participants,
 - d) register's functionalities related to processing, copying and drawing up summaries of data,
 - e) procedure for registering secondary market transactions,
 - f) ensuring the security of data protecting information;
- 5) procedures pertaining to the provision of capacity, including detailed conditions and the manner of:
 - a) settling the performance of the capacity obligation, including definition of the adjusted capacity obligation during a system stress event,
 - b) demonstrations,
 - c) determining the volume of the capacity provided, including the method for determining the volume of capacity provided as a result of a temporary restriction of electricity consumption,
 - d) conducting the test;
 - 6) the date of verifying the performance of the capacity obligation in a system stress event;
 - 7) the manner of verifying the performance of the adjusted capacity obligation;
 - 8) the formula based on which the remuneration referred to in Article 62 is worked out;
 - 9) the manner in which metering and settlement data are exchanged between the operator and the transmission system operator relevant for the location of the physical cross-border generating unit or of the physical cross-border demand side response unit, and the template of the obligation referred to in Article 19(4)(4);
 - 10) detailed conditions of and the manner in which pre-auctions are held;
 - 11) conditions and principles applicable to reporting physical cross-border units for entry in the register,
 - 12) procedure for submitting and examining the applications referred to in Article 47a;
 - 13) method and procedure for submitting and verifying the declarations referred to in Article 67a;
 - 14) procedure for updating the schedule of the investment project;
 - 15) method and procedure for charging and paying the remuneration where penalties

are charged in accordance with Article 47(2), upon submission of the information referred to in Article 52(2);

- 16) method and procedure for taking into account the operator's instructions referred to in Article 58 (4a).

Article 84. 1. The operator shall publish, on its website, publicly available draft capacity market regulations, and should offer the possibility of reporting any comments, by defining the place and the location at which these should be submitted, with the deadline not being shorter than 14 days from the draft being published.

2. The operator shall submit the draft capacity market regulations to the President of ERO, for approval, along with information about comments made and about the manner in which such comments have been handled. The operator shall publish these documents on its website and shall submit them to the minister relevant for energy.

3. The President of ERO, acting in cooperation with the minister relevant for energy, shall approve or refuse to approve the capacity market regulations, by way of decision, within 45 days. No appeal may be filed against the decision of the minister relevant for energy.

4. Where the capacity market regulations have been rejected, the President of ERO shall list, in the justification to the decision, the proposed amendments and shall determine the deadline by which the new draft capacity market regulations need to be submitted.

5. The operator shall immediately publish, on its website, the capacity market regulations approved by the President of ERO.

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

7. In the event of a change in the capacity market rules, the provisions of paragraphs 1 – 6 shall apply accordingly.

SECTION V

Monetary penalties

Article 85. 1. Monetary penalties shall be imposed on:

- 1) those who fail to perform or unduly perform the obligation referred to in Article 11;
- 2) those who submit, in the course of the certification process, untrue or incomplete

information;

- 3) those who behave, in the course of the certification process or of an auction, in a manner that violates the provisions of law or the capacity market regulations;
- 4) (repealed)
- 5) those who fail to submit, within the prescribed deadline, the documents or information referred to in Article 5,
- 6) those who submit false or incomplete data when submitting the declaration referred to in Article 76a(1).

2. Monetary penalties shall be imposed on the operator in the case of:

- 1) failure to conduct the certification process within the deadline referred to in Article 3(2)-(4);
- 2) conducting the certification process in violation of the provisions or of the capacity market regulations;
- 3) failure to hold the pre-auction within the deadline referred to in Article 4(2);
- 4) failure to announce the date of the pre-auction in accordance with Article 4(4);
- 5) failure to publish the results of pre-auctions within the deadline referred to in Article 9(8);
- 6) unauthorised disclosure of prices referred to in Article 9(9);
- 7) unjustified, unequal treatment of the physical units or the capacity market units entered in the certification process;
- 8) failure to provide, in due time, information referred to in Article 10, Article 14, Article 27 or Article 28;
- 9) unjustified refusal to enter a physical unit in the register;
- 10) unjustified refusal to issue, for the capacity provider, the certificate referred to in Article 23;
- 11) failure to announce the dates of the main auction and of the additional auction within the deadline referred to in Article 29(2);
- 12) failure to hold the main auction or the additional auction within the deadline referred to in Article 29(2), due to reasons attributable to the operator;
- 13) holding capacity auctions in violation of legal regulations of capacity market regulations;
- 14) unjustified refusal to participate in a capacity auction, issued to a capacity market unit;
- 15) failure to provide, in due time, the information referred to in Article 38(2).

16) violation of the principles applicable to the announcement of the system stress event, as referred to in Article 57(9).

3. Monetary penalties shall be imposed on the distribution system operator in the case of:

- 1) unjustified refusal to cooperate with the operator or failure to meet the deadlines in situations referred to in Article 3(5);
- 2) failure to provide, in due time, the metering data referred to in Article 58(5), or the information referred to in Article 75(6) or in Article 89d.

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

5. The amount of the monetary penalty referred to in paragraphs 1-3 must not exceed 5% of the revenue of the economic operator upon which it is imposed, as generated in the preceding fiscal year, and where the monetary penalty is imposed upon an economic operator acting pursuant to a licence, the amount of the penalty must not exceed 5% of the revenue of the economic operator upon which it is imposed, as generated on the licenced activity in the preceding fiscal year.

6. The monetary penalty shall constitute income of the state budget.

7. While determining the amount of the monetary penalty, the President of ERO shall take into consideration the type of the violation and its impact on the capacity market, the effects of the violation and the financial standing of the economic operator.

8. The President of ERO may waive the imposition of the monetary penalty if the impact of the violation on the capacity market and its results are insignificant, and the entity has ceased to violate the law or has performed the obligation.

9. The monetary penalty referred to in paragraphs 1-3 shall be paid within 14 days from the date on which the decision of the President of ERO on the imposition of the monetary penalty has become final.

10. The monetary penalty referred to in paragraphs 1-3 shall be subject to recovery in accordance with the provisions pertaining to debt recovery proceedings in the administration sector.

SECTION VI

Amending provisions

Article 86. The following amendments shall be introduced to the Act - Energy Law of 10 April 1997 (Journal of Laws of 2017, item 220, 791, 1089, 1387 and 1566):

- 1) in Article 11d(1)(6), the period shall be replaced with a semicolon, and item 7 shall be added reading as follows:

“7) announces the system stress event referred to in Article 2(26) of the Act on the Capacity Market of 8 December 2017 (Journal of Laws, item ...).”;

- 2) in Article 15b(4)(7), the period shall be replaced with a semicolon, and item 8 shall be added reading as follows:

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

- 3) Article 34 shall receive the following wording:

“Article 34 1. An energy company to which a licence has been granted shall pay an annual fee to the state budget, included in the costs of its operation, hereinafter referred to as the “licence fee”.

2. The amount of the licence fee shall be equal to the product of the revenues of the energy company on the sale of goods and services related to its activity covered by the licence, as generated in the year in which the obligation to pay the fee arises, and the applicable rate specified in regulations issued pursuant to paragraph 6.

3. The licence fee for each type of activity subject to a licence must not be lower than PLN 1000 and greater than PLN 2,500,000.

4. The obligation to pay the licence fee shall arise on the last day of the calendar year in which the energy company has generated, on each type of licenced activity, revenues that are equal to or greater than zero. The licence fee form the template of which is identified in regulations issued pursuant to paragraph 6 shall be used with regard to the licence fee.

5. The President of ERO may require the energy company to which the licence has been granted to provide information on the licence fee, to the extent related the grounds for and correctness of calculations of the licence fee.

6. The Council of Ministers shall determine, by way of regulation, the following:

- 1) detailed scope of information related to the licence fee that the President of ERO may require, and the manner of its submission,
- 2) the manner in which the licence fee is collected by the President of ERO, including the payment deadline,
- 3) licence fee indices applicable to the individual types of licenced activity,

4) the template of the licence fee form
 – taking into consideration the revenues of energy companies generated on the licenced activity, as well as the costs of regulations, and considering the efficiency and reliability of the process of calculating and collecting the licence fees.

7. An energy company generating electricity with the use of a renewable energy source whose combined capacity does not exceed 5 MW shall be released from the requirement to pay the licence fee on the generation of energy with the use of such installation.”;

4) In Article 45, after paragraph 1e, paragraph 1f shall be added, reading as follows:

“1f. The operating costs of energy companies dealing with the transmission or distribution of electricity, as referred to in paragraph 1(1), shall include the reasonable costs of performing activities specified in the Act on the Capacity Market of 8 December 2017, and the costs of introducing and collecting the capacity fee referred to in that Act.”;

5) Article 49a(1) shall receive the following wording:

“1. An energy company dealing with generating electricity shall be required to sell not less than 30% of the electricity generated in a given year on commodity exchanges in the meaning of the Act on Commodity Exchanges of 26 October 2000, or on a market organised by the entity that manages the regulated market of the Republic of Poland, under reserve of paragraph 2.”;

6) In Article 56:

a) in paragraph 1(49), the period shall be replaced with a semicolon, and item 50 shall be added, reading as follows:

“50) fails to perform or unduly performs the obligation referred to in Article 34(5).”,

b) in paragraph 2h(9), the period shall be replaced with a semicolon, and item 10 shall be added, reading as follows:

“10) item 50 equals from PLN 500 to PLN 5000.”,

c) paragraph 4 shall receive the following wording:

“4. The monetary penalty shall be payable to the account of the applicable tax office, with the exception of paragraph 4a.”,

4) after paragraph 4, paragraph 4a shall be added, reading as follows:

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

Article 87. After Article 369, Article 369a shall be added in the Act - Environment Protection Law of 27 April 2001 (Journal of Laws of 2017, item 519, as amended⁵⁾), reading as follows:

“Article 369a. 1. The provisions of Article 367(1)(1), in their scope related to the release, by an entity using the environment, of substances or energy in violation of the terms of the permit obtained, or of Article 368 shall not apply to capacity market units referred to in Article 2(12) of the Act on the Capacity Market of 8 December 2017 (Journal of Laws, item) operating during system stress events referred to in Article 2(26) of that Act.

2. The provision of paragraph 1 pertaining to Article 367(1)(1) shall not apply where, in the opinion of the voivodeship environmental protection director, the release of energy or substances, by the entity using the environment, in violation of the terms and conditions of the applicable permit may pose a threat to the health of humans or may result in considerable, direct negative implications for the environment.”.

Article 88. The following amendments shall be introduced to the Act of 29 June 2007 on the Coverage of Costs Incurred by Producers in Connection with Early Termination of Long-Term Contracts for the Sale of Power and Electricity (Journal of Laws of 2017, item 569):

1) In Article 54:

a) paragraph 1 shall receive the following wording:

“1. The funds collected by Zarządca Rozliczeń S.A. while performing the activity referred to in Article 49, may be deposited in:

- 1) treasury securities,
 - 2) bonds guaranteed by the State Treasury,
 - 3) bank deposits and bank securities in the Polish currency
- with the provisions of paragraph 3 taken into consideration.”,

b) paragraph 3 shall receive the following wording:

“3. Where the expected maturity period of the deposits, as referred to in paragraph 2, is longer than 6 months, Zarządca Rozliczeń S.A. shall deposit the funds, with the consent of its general meeting of shareholders, in the

⁵⁾ Amendments to the consolidated wording of the aforementioned Act have been published in the Journal of Laws of 2017, items 785, 898, 1089, 1529, 1566, 1888, 1999 and 2056.

investment certificates of the investment fund managed by an investment fund association in which the State Treasury or a state legal person is the dominant entity in the meaning of the Act of 27 May 2004 on Investment Funds and on Managing Alternative Investment Funds (Journal of Laws of 2016, item 1896, as amended⁶⁾.”;

- 2) in Article 56(2)(3), the period shall be replaced with a semicolon, and item 4 shall be added reading as follows:
 - “4) appointing another entity performing financial settlements of the capacity market pursuant to the Act on the Capacity Market dated 8 December 2017 (Journal of Laws, item ...).”.

Article 89. The following amendments shall be introduced to the Act on Renewable Energy Sources of 20 February 2015 (Journal of Laws of 2017, item 1148, 1213 and 1593):

- 1) in Article 82(1), in the introduction to the calculations:
 - a) the words “Article 72(1)” shall be replaced with “Article 72(1)(1)”,
 - b) the words “Article 72(2)” shall be replaced with “Article 72(1)(2)”,
- 2) In Article 105:
 - a) paragraph 1 shall be abrogated,
 - b) paragraph 2 shall receive the following wording:

“2. The maturity of deposits made on the RES fee account shall be adjusted, by the renewable energy settlement operator referred to in Article 106, to the date of payment of amounts used to cover the negative balance referred to in Article 93(1)(4) and in Article 93(2)(3)”;
- 3) in Article 169(1)(1), the words “items 1-19” shall be replaced with “items 1-18”;
- 4) in Article 170(4)(2), the words “items 12, 18 and 19” shall be replaced with “items 12 and 18”;
- 5) in Article 172(1)(1), the words “Article 168(1)-(19)” shall be replaced with “Article 168(1)-(18)”.

SECTION Via

Episodic regulations

⁶⁾ Amendments to the consolidated wording of the aforementioned Act have been published in the Journal of Laws of 2016, item 1948 and 2260, as well as of 2017, item 724, 768, 791 and 1089.

Article 89a. 1. For periods before 1 January 2028, the capacity fee rates shall be determined separately for the end users:

- 1) settled on a lump-sum basis – as a monthly rate, depending on the annual electricity consumption, payable for the metering point understood as a point in the grid where the electricity consumption is measured or determined, specified in the electricity distribution service agreement or in the electricity sale agreement referred to in Article 5(1) of the Act of 10 April 1997 – Energy Law, or in the comprehensive agreement referred to in Article 5(3) of the Act;
- 2) other than those specified in point above – as the rate applied to the volume of electricity drawn from the grid during selected hours of the day, expressed in PLN per kWh of electricity.

2. The following end users shall be deemed the end users settled on a lump-sum basis, referred to in paragraph 1(1):

- 1) consuming electricity at metering points with rated voltage not higher than 1 kV, consuming electricity for the needs of:
 - a) households,
 - b) utility premises connected with running households, provided that no business activity is conducted there,
 - c) boarding houses, provided that no business activity is conducted there,
 - d) apartment allotted on a rotation basis, apartments of diplomatic mission employees and foreign delegation employees,
 - e) cottages, cabins and summer houses in allotment gardens where no business activity is conducted and, in the cases of joint measurement, the administration of allotment gardens,
 - f) lighting in residential buildings,
 - g) power supply for elevators in residential buildings,
 - h) heat distribution units and pressure boosting stations managed by the administration of residential buildings,
 - i) garages where no business activity is conducted;
- 2) classified by an energy company as a separate tariff group established in accordance with the regulations issued on the basis of Article 46 (3) and (4) of the Act of 10 April 1997 – Energy Law, for users connected to the grid, regardless of the rated voltage level in the grid, whose devices, upon the consent of that company, are not equipped with metering and settlement systems in order to

supply, in particular, the motors of alarm sirens, gas pipeline cathodic protection stations and advertising lighting, as well as in the case of short-term electricity consumption lasting not longer than one year;

- 3) other than those mentioned in points (1) and (2), supplied from the grid with the rated voltage not higher than 1 kV and with the contracted capacity not higher than 16 kW.

3. For the purpose of assigning the end user referred to in paragraph 1(1) to the appropriate capacity fee rate, in accordance with Article 89b(3), the qualification shall take place on the basis of the volume of electricity consumed by this end user in the period of one year ending on the date of the last reading made. In the case of an end user who consumed electricity for less than one year, the end user shall be classified for a given consumption range, assuming the total volume of energy consumed until the date of the last reading.

4. The capacity fee payable by an company pursuing business activity in the field of transmission, distribution or generation of electricity shall be calculated as:

- 1) the sum of the products of the capacity fee rate for individual ranges of annual electricity consumption and the number of the end users referred to in paragraph 1(1);
- 2) the sum of the products of the capacity fee rate for a given group of end users and the volume of electricity drawn from the grid during selected hours of the day by the end users referred to in paragraph 1(2).

Article 89b. 1. For periods before 1 January 2028, the President of ERO shall calculate, on the basis of data from the year preceding the year of determining the capacity fee rates, the capacity market cost for the group of the end users referred to in Article 89a(1)(1), in accordance with the following formula:

$$K_{GD} = \frac{Z_{GD}}{Z_K - R} \cdot K_C$$

where the individual symbols mean:

K_{GD} – capacity market cost for the group of the end users referred to in Article 89a(1)(1),

Z_{GD} – annual electricity consumption in the system by the end users referred to in Article 89a(1)(1),

Z_K – annual electricity consumption in the system by the end users,

R – volume of electricity referred to in paragraph 2,

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

2. The volume of electricity resulting from the classification of the end users referred to in Article 70a(1) in a given year or in a given quarter of the delivery year referred to in Article 74(5) shall be calculated in accordance with the following formula:

$$R = (1 - A_{K1}) \cdot Z_{K1} + (1 - A_{K2}) \cdot Z_{K2} + (1 - A_{K3}) \cdot Z_{K3}$$

where the individual symbols mean:

A_{K1} – the factor referred to in Article 70a(5), for end users K1,

Z_{K1} – volume of electricity drawn from the grid and consumed by end users K1 during the hours referred to in Article 74(4)(2),

A_{K2} – the factor referred to in Article 70a(5), for end users K2,

Z_{K2} – volume of electricity drawn from the grid and consumed by end users K2 during the hours referred to in Article 74(4)(2),

A_{K3} – the factor referred to in Article 70a(5), for end users K3,

Z_{K3} – volume of electricity drawn from the grid and consumed by end users K3 during the hours referred to in Article 74(4)(2).

3. The capacity fee rate for the end users referred to in Article 89a(1)(1), shall be calculated by the President of ERO separately for the end users consuming annually:

- 1) less than 500 kWh of electricity;
- 2) between 500 kWh and 1200 kWh of electricity;
- 3) over 1200 kWh to 2800 kWh of electricity;
- 4) more than 2800 kWh of electricity.

4. In order to determine separate capacity fee rates for the end users referred to in Article 89a(1)(1), the President of ERO shall determine the base rate in accordance with the following formula:

$$S = \frac{K_{GD}}{0,25 \cdot a + 0,6 \cdot b + c + 1,4 \cdot d}$$

where the individual symbols mean:

S – base rate,

K_{GD} – capacity market cost for the group of the end users referred to in Article 89a (1)(1),

a – number of the end users referred to in Article 89a(1)(1), consuming less than 500 kWh of electricity per year,

- b – number of the end users referred to in Article 89a(1)(1), consuming between 500 kWh and 1200 kWh of electricity per year,
- c – number of the end users referred to in Article 89a(1)(1), consuming over 1200 kWh to 2800 kWh of electricity per year,
- d – number of the end users referred to in Article 89a(1)(1), consuming more than 2800 kWh of electricity per year.

5. The capacity fee rates for individual groups of the end users referred to in paragraph 3 shall be equal to:

- 1) $0.25 \times S/12$ per month – for the end users referred to in paragraph 3(1);
- 2) $0.6 \times S/12$ per month – for the end users referred to in paragraph 3(2);
- 3) $1 \times S/12$ per month – for the end users referred to in paragraph 3(3);
- 4) $1.4 \times S/12$ per month for the end users referred to in paragraph 3(4).

Article 89c. For periods before 1 January 2028, the capacity market cost referred to in Article 74 paragraph 10 for the end users referred to in Article 89a(1)(2), shall be calculated by the President of ERO in accordance with the following formula:

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

where the individual symbols mean:

- K_P – capacity market cost for the end users referred to in Article 89a(1)(2),
- K_C – total capacity market cost in a given delivery year,
- K_{GD} – capacity market cost for the end users referred to in Article 89a (1)(1).

Article 89d. For the periods before 1 January 2028, the operator and the capacity fee payer shall prepare and submit to the President of ERO written information for each quarter of charging capacity fee, containing data on the number of the metering points referred to in Article 89a(1)(1), together with the corresponding ranges of annual electricity consumption within one month following the end of the quarter for which the information is prepared.

Article 89e. 1. The qualification period referred to in Article 70a(1) and (2) shall cover the following years:

- 1) 2021-2022 – calendar month;
- 2) 2023-2024 – decade.

2. The decade referred to in paragraph 1(2) shall be 10 consecutive calendar days.

3. For calendar months of 31 days, the last decade in a month shall be 11 consecutive calendar days.

4. For a calendar month of 28 or 29 days, the last decade in such a month shall be 8 or 9 consecutive calendar days, respectively.

Article 89f. To the extent not regulated in this paragraph, for periods before 1 January 2028, the provisions of paragraph III of chapter 3 shall apply accordingly to the capacity fee to be paid by the end users referred to in Article 89a(1)(2).

SECTION VII

Transitional, adjusting and final provisions

Article 90. 1. The first main auction shall be held in the third year prior to the delivery period.

2. The first additional auction shall be held in the year preceding the year in which the delivery periods of the first main auction falls.

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

Article 91. 1. The second main auction shall be held in the fourth year prior to the delivery period.

2. The second additional auction shall be held in the year preceding the year in which the delivery periods of the second main auction falls.

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

Article 92. For the delivery periods falling in 2021–2023, the capacities located in the electrical power systems of the European Union Member States directly interconnected with the system, shall participate in the capacity market solely by taking part in the additional auctions.

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

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

Article 94. 1. The first general certification shall commence on 3 April 2018 and end on 29 May 2018. Register entries obtained in the course of the first general certification shall authorise to participate in the certification referred to in paragraph 2.

2. Certifications for the main auctions, for the delivery periods falling in 2021–2023, shall be conducted jointly.

3. The proposals of parameters for three main auctions held in 2018 shall be submitted by the operator to the minister relevant for energy and to the President of the Energy Regulation Office by 20 June 2018.

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

5. The forecast demand for capacity in the delivery period falling in 2022 and 2023 shall be determined with the results of the first and second main auction taken into consideration accordingly.

6. For the main auctions pertaining to the delivery periods identified in paragraph 2, the de-rating factor for demand side response capacity market units, shall equal 1.

7. In the case referred to in paragraph 4, the minister relevant for energy shall determine the implementing measures by 22 August 2018.

8. Certification for the main auction pertaining to the delivery periods falling in 2021-2023 shall commence on 5 September 2018 and shall end on 31 October 2018.

9. Main auctions for the delivery period falling in:

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

Article 95. A generating capacity market unit comprising a physical existing generating unit that commence the generation of electricity after 1 July 2017, for which the fulfilment of the parameters referred to in Article 32(1)(4) is evidenced, shall be authorised to hold, in the first capacity auction, the status of a price-maker, and to conclude a capacity agreement for a period that is not longer than 5 or 15 delivery periods, as the case may be, or for a period of delivery that is by two years longer than the maximum period defined in Article 25(4)(1) or (2), as the case may be, if the unit concerned meets the requirements referred to in Article 25(5).

Article 96. 1. For the purpose of certification for the first main auction, the period of time over which the capital expenditures referred to in Article 32(2) are borne shall include the period of time from 1 January 2014.

2. For the purpose of certification for the second main auction, the period of time

over which the capital expenditures referred to in Article 32(2) are borne shall include the period of time from 1 January 2017.

Article 97. 1. The operator shall create the register:

- 1) in the scope of functionalities enabling to conduct the general certification process - by 28 February 2018;
- 2) in the scope of functionalities enabling to conduct the main certification process - by 31 July 2018;
- 3) in the scope of functionalities enabling to organise the secondary market - by 31 December 2019;
- 4) in the remaining scope - by 30 June 2020 r.

2. The operator shall create the dedicated ICT system referred to in Article 4(3), in the scope of:

- 1) functionalities enabling to hold main auctions - by 31 October 2018;
- 2) remaining functionalities - by 31 December 2019.

3. The operator shall inform the President of ERO and the minister relevant for energy about the creation of the register and of the dedicated ICT system referred to in Article 4(3), immediately after the expiry of the deadlines referred to in paragraphs 1 and 2, as the case may be.

Article 98. The President of ERO shall publish the list referred to in Article 16(3) two weeks prior to the commencement of the first general certification process at the latest.

Article 99. 1. The capacity fee shall be collected from 1 January 2021.

2. (repealed)

Article 100. The obligation referred to in Article 49a(1) of the Act amended in Article 86, in the meaning given by this Act, shall be performed, by the energy company dealing with generating energy, for the year 2018, with reference to electricity generated until 1 January 2018.

Article 101. The current implementing measures issued pursuant to Article 53(4) of the act amended in Article 89, shall remain in full force and effect until the entry into force of the implementing measures issued pursuant to Article 53(4) of the act amended in Article 89, in their wording presented in this Act, but in no case later than for the period of 24 months following the entry of the present Act into force and may be

amended during that time.

Article 102. The current implementing measures issued pursuant to Article 34(3) of the act amended in Article 86, shall remain in full force and effect until the entry into force of the implementing measures issued pursuant to Article 34(6) of the act amended in Article 86, in their wording presented in this Act, but in no case later than for the period of 12 months following the entry of the present Act into force.

Article 103. 1. Based on the analysis of balancing data pertaining to the national electric power system, and based on the assessment of the degree of development of the energy market, the Council of Ministers shall evaluate, no later than in 2024, the capacity market and shall submit, to the Sejm of the Republic of Poland, information on the results of the operation of the capacity market, along with proposals of changes to the capacity market or with a proposal to do away with the capacity market.

2. Where the decision to do away with the capacity market or to cease the capacity auctions is made in the situation referred to in paragraph 1, the capacity agreements concluded shall remain in force and shall be performed.

Article 104. Until the date on which the decision of the European Commission is issued approving conformance of the public aid provided for in:

- 1) Article 60(1) with the internal market, or a decision stating that the measure concerned does not constitute public aid, the capacity agreement shall not be subject to performance;
- 2) Article 70(3) with the internal market, or a decision stating that the measure concerned does not constitute public aid, the provisions of Article 70(3) and Articles 71-73 shall not apply;

Article 105. 1. The limit of state budget expenditures earmarked for the performance of statutory tasks of the President of ERO shall equal:

- 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 President of ERO shall monitor the utilisation of the expenditure limit referred to in paragraph 1 and shall introduce the corrective mechanisms referred to in paragraph 3.

3. Where the value of the expenditures in the first half of a given budget year exceeds 65% of the limit of expenditures for a given year, the party disposing of the funds shall reduce the value of funds earmarked for expenditures in the second half, by the amount constituting the difference between the value of the limit and the amount by which it has been exceeded.

4. Where the value of expenditures in the individual months complies with the financial plan, the provision of paragraph 3 shall not apply.

Article 106. 1. The limit of state budget expenditures earmarked for the performance of statutory tasks of the minister relevant for energy shall equal:

- 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 relevant for energy shall monitor the utilisation of the expenditure limit referred to in paragraph 1 and shall introduce the corrective mechanisms referred to in paragraph 3.

3. Where the value of the expenditures in the first half of a given budget year exceeds 65% of the limit of expenditures for a given year, the party disposing of the funds shall reduce the value of funds earmarked for expenditures in the second half, by the amount constituting the difference between the value of the limit and the amount by which it has been exceeded.

4. Where the value of expenditures in the individual months complies with the financial plan, the provision of paragraph 3 shall not apply.

Article 107. The Act shall enter into force 14 days from its publication.

PRESIDENT OF THE REPUBLIC OF POLAND