

Anna Moskwa,  
Minister Klimatu i Środowiska

Amsterdam, 29 November 2022

Dear Minister Moskwa,

The European Federation of Energy Traders represents 130 companies trading gas, electricity and carbon throughout Europe. We are writing to you with respect to the Regulation of the Council of Ministers from 8 November 2022 on the method for calculating the price limit (further referred to as "Regulation"), which we believe can have severe, unintended consequences for the Polish economy. In essence, we believe that:

- The proposed clawback mechanism deviates significantly from the EU Council Regulation (COM/2022/473 final), including by having a negative impact on the future uptake of power purchase agreements (PPAs), and maintaining the mechanism beyond June 2023;
- The imposition of a clawback on trader revenues calculated separately for each day threatens the economic viability of their activities. Should these entities become insolvent or leave the Polish electricity market, producers and consumers will become fully exposed to the price volatility that Europe is experiencing today;
- The introduction of a clawback on producers while ignoring the nature of the contractual arrangements they hold and other costs they incur will severely affect their profitability and remove the incentive to invest in new generation sources that are urgently needed to tackle the crisis.

Below we offer some more detailed arguments that support our position. We would be happy to discuss these matters further.

### **Impact on traders**

A clawback on electricity trading as currently proposed, discourages commercial activities and may threaten the solvency of existing market participants. Traders, acting as intermediaries in the electricity markets, uptake and manage considerable risks, such as those stemming from price volatility or intermittent RES generation profiles, which would otherwise have to be borne by producers or consumers. This ability to trade and manage

these risks incentivises new investment, supports the development of new renewable energy sources and optimises prices to end-customers.

The Regulation trims allowed revenues of trading entities to levels that make many transactions commercially unviable, since the proposed margin level is insufficient to cover even the cost of capital or credit. In addition, the daily calculation of the contributions under the scheme is particularly damaging, as it targets daily revenues and may lead to situations where a company's monthly contribution to the fund is higher than its profit for the same period. Consequently, trading entities will likely either be forced to withdraw from the market or risk insolvency. The resulting loss of liquidity in the Polish market reduces the number of counterparties for the sale or purchase of power and balance a renewable generator's portfolio. Fewer counterparties means less diverse bids and offers on the market, leading to higher prices and price volatility.

The clawback will have significant consequences to consumers and investors in new RES generation as they become exposed to the market volatility currently experienced in Europe. In addition, with much fewer transactions being concluded, the state will not be able to collect the envisaged funding necessary to finance the cap for end customers.

**EFET is fully aware of the hardship that high electricity prices cause to industrial consumers and households. However, we are confident that the currently proposed clawback on trading will not secure the necessary financing in the short-term, but rather have very serious consequences on the Polish economy and consumers in the medium- and long-term. We therefore urge the Polish authorities to revise the mechanism and ensure that only actual realised revenues be subject to the clawback.**

#### **Impact on producers**

As trading entities, our position is that the clawback should only target the actual *realised* revenues of energy producers, taking due account of all contractual commitments of market participants, including forward contracts and PPAs. We stress that the same approach has been promoted under the EU Council Regulation (COM/2022/473 final), where the importance of hedging was explicitly emphasised.

The ability for producers to enter into longer-term contractual arrangements that offer a predictable price for their output is an indispensable feature of the power market. Hence, any clawback measure that is introduced should not discourage market participants from entering into such contractual arrangements (such as PPAs), or lead to the termination of these arrangements. We further note that such arrangements effectively replace state subsidy schemes for the development of renewables, thereby reducing the related financial burden for end customers and governments.

It is our understanding that the Ministry of Climate and Environment intended to take into account the above conditions in the provisions of §2 point 1 letter c of the Regulation in question, yet we note that the current wording fails to do so by referring to contractual arrangements that do not exist. The provision in question should instead recognise that contemporary market practice entails separate conclusion of supply contracts and financial hedges. We would be happy to offer our assistance in revising the Regulation accordingly.

**Bearing in mind the uncertainties regarding the proper interpretation of the Regulation of the Council of Ministers of 8 November, as well as the severe consequences it may have for the Polish economy, we suggest that the adoption of the clawback mechanism is postponed until the necessary amendments are made.**

**We stand ready to support the Polish authorities in this process for the benefit of the Polish consumers, industries and the electricity market.**

Kind Regards,

On behalf of EFET WG Poland,



Jerome LePage

Chairman of EFET Electricity Committee