

COMMUNICATION NO. 28/2017
from the President of the Energy Regulatory Office
concerning performance of tasks relating to maintenance of mandatory
natural gas stocks

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Introduction

This communication discusses the basic responsibilities in connection with creation and maintenance of mandatory natural gas stocks following amendment of the Act of 16 February 2007 on stocks of crude oil, petroleum products and natural gas, principles of proceeding in the event of a threat to fuel security of the State and disruption on the petroleum market (Journal of Laws of 2016, item 1899, as amended), hereinafter the 'Stockpiling Act' or the 'Act', by way of

- act of 22 July 2016 amending the Energy Law and some other acts (Journal of Laws of 2016, items 1165 and 1986), hereinafter the 'act of 22 July 2016'; and
- act of 30 November 2016 amending the Energy Law and some other acts (Journal of Laws of 2016, item 1986), hereinafter the 'act of 30 November 2016'.

I. The subjective scope of the obligation to maintain mandatory natural gas stocks, hereinafter the 'stockpiling obligation'.

Pursuant to Article 24.1 of the Stockpiling Act, in order to ensure supply of natural gas to the Republic of Poland and minimisation of the impact of:

- 1) threat to the fuel security of the State;
 - 2) occurrence of an emergency situation within the gas network; or
 - 3) unforeseen surge in natural gas consumption
- energy undertakings pursuing economic activity consisting in international trading in natural gas and entities importing natural gas are obliged to maintain mandatory stocks of natural gas.

Following amendment of the Stockpiling Act, two categories of entities obliged to maintain mandatory stocks of natural gas are distinguished:

- (1) energy undertakings pursuing economic activity consisting in international trading in natural gas, hereinafter the '**undertakings**'¹ and
 - (2) importing natural gas, hereinafter the '**entities**'²
- hereinafter referred to collectively as the '**obliged entities**'.

In the context of the subjective scope of the stockpiling obligation, it should also be noted that, according to Article 24.1a of the Stockpiling Act, as regards liquefied natural gas supplied from abroad to the point of delivery of that gas to the terminal referred to in Article 1.2.1 of the Act on Investment in LNG Regasification Terminal in Świnoujście (Journal of Laws of 2016 item 1731, as amended), solely the

¹ entities, both holding international natural gas trading licenses (OGZ) and pursuing that economic activity without the obligation to hold such license in connection with a statutory exemption from the said obligation under Article 32.1.4 of the Energy Law (i.e. with the annual sales value below EUR 100,000.00);

² the entities importing natural gas into the territory of the Republic of Poland within the framework of an intra-Community acquisition or importation for the purposes other than trading in natural gas are basically classified in this category; the entities importing natural gas are, for instance, customers importing natural gas for their own use, undertakings pursuing economic activity consisting in transmitting or distributing natural gas that import natural gas for the purpose of balancing, supplying gas compressor stations, compensating for network losses etc.;

entity using regasification services or handling liquefied natural gas based on a contract with the terminal's operator and whose regasified natural gas is being introduced into the transmission network or loaded onto other means of transport shall be obligated to maintain mandatory natural gas stocks.

II. Objective scope of stockpiling obligation.

Undertakings and entities specified in item I above, in accordance with Article 24.2 of the Stockpiling Act, are obliged to:

- 1) maintain mandatory natural gas stocks in the volumes corresponding, as a minimum, to the 30-day average daily importation of that gas as defined in the mode specified in Article 25.2 or Article 25.5 of the act;
- 2) maintain mandatory natural gas stocks in the storage facilities the technical parameters of which enable supply of their total volume to the gas system within a period not longer than forty (40) days; and
- 3) present to the operator of the gas transmission system or operator of the combined gas systems the characteristics of the storage facilities in which they maintain mandatory natural gas stocks for the purpose of review of technical capabilities of supply of such gas stocks to the gas transmission system.

In the event when it is determined that the technical parameters of storage facilities do not allow for supply of the mandatory natural gas stocks to the gas transmission system within a period not longer than forty (40) days, the gas transmission system operator (TSO) or the combined system operator should notify the ERO President thereof within seven (7) days (Article 24.4 of the act).

The Stockpiling Act stipulates that mandatory natural gas stocks may be maintained both in the territory of the Republic of Poland within the storage facilities connected to the gas transmission or distribution system (Article 24.3 of the act) and outside the territory of the Republic of Poland in the territory of another member state of the European Union or member state of the European Free Trade Agreement (EFTA), a party to the Agreement on the European Economic Area, on the terms and conditions defined in Article 24a of that act.

III. Determination and Review of Mandatory Stock Volumes.

1. General principles

1.1. The procedure for determining mandatory natural gas stock volumes by the obliged entities and period of maintenance of such stocks have been defined in Article 25 of the Stockpiling Act (with the reservation relating to the transition period referred to hereinafter). Two situations may be distinguished in this respect:

- a) when gas was imported by these entities during the period from April 1 of the preceding year until March 31 of a given year;

In such case, the volume of mandatory stocks is determined by the obliged entity based on the volume of natural gas imported over the specified period (Article 25.2) and subsequently presented to the ERO President for review. The ERO President reviews, by way of a decision, this information based on the data contained in the statistical reports drafted by the undertakings and entities involved and the data submitted under Article 49c.1 of the Energy Law.

The mandatory stocks in the reviewed volume are maintained during the period from October 1 of a given year until September 30 of the following year;

- b) when commencement of importation of gas from abroad is planned;

According to Article 25.5 of the Stockpiling Act in the wording agreed in the act of 30 November 2016, the volume of mandatory natural gas stocks for an obliged entity which is planning to commence importing natural gas from abroad and for the entity which has filed an application for the granting of a license for international trading in natural gas for the period from the day of commencement of importation³ of natural gas until September 30 is determined, by way of a decision, by the ERO President, based on average daily importation planned by the undertaking or entity during the period from the day of its commencement until March 31 of the following year. For

³ the obliged entity should advise the ERO President of its intention to import, at the latest 30 days ahead of the day of commencement of such importation. The day of commencement of importation is deemed to be the day on which natural gas is imported into the territory of the Republic of Poland for the first time (Article 25.6 and Article 25.7 of the act);

the period from October 1 after commencement of importation of natural gas until September 30 of the following year, the volume of mandatory natural gas stocks is determined by the ERO President, by way of a separate decision issued, at the latest, 15 days ahead of October 1 after the day of commencement of importation of natural gas, based on the history of average importation volumes.

1.2. In the context of determination of the volume of mandatory stocks, questions have arisen concerning the mode of fulfilment of that obligation in the case when a given entity pursues economic activity consisting in supply of gas to the countries other than Poland through the territory of the Republic of Poland (the so-called natural gas transit).

With reference to that issue, it should be noted that the previously invoked Article 24.1 of the Stockpiling Act stipulates that the purpose of creation and maintenance of mandatory natural gas stocks by the obliged entities is to assure **supply of natural gas to the Republic of Poland** and minimisation of the consequences of a **threat to the fuel security of the State, occurrence of an emergency situation within the gas network or an unforeseen surge in natural gas consumption**. Importantly, the act defines the **State's fuel security** in terms of natural gas as a condition enabling ongoing satisfaction of the customers' demand for natural gas in a specified volume and within a specified timeframe to the extent permitting proper functioning of the economy (Article 2.1 of that act). Meanwhile, a customer is, in the light of the statutory definition, any party that receives or off-takes gaseous fuels under an agreement with an energy undertaking (Article 2.22 of the act).

Under Article 25.2 of the act, the obliged entities that imported natural gas during the period from April 1 of the preceding year until March 31 of a given year determine the volume of mandatory natural gas stocks based on the volume of natural gas imported over that period. Importation is defined (Article 2.14 of the act) as bringing natural gas into the territory of the Republic of Poland (...) in the form of intra-Community acquisition or imports.

The list of the aforesaid regulations leads to the conclusion that, in the context of the stockpiling obligation, the volume of natural gas brought into the country for the purposes associated with functioning of the economy and satisfaction of the demand from domestic customers is of relevance. Hence, the volume of imported natural gas referred to in Article 25.1 of the act and the volume of importation referred to in Section 5 of that article, in the case of transit of natural gas through the territory of the Republic of Poland, should be determined as the difference between the volumes of gas imported and exported by the obliged entity during the periods referred to in those regulations. An analogical approach will be adopted to the transition period (more hereinafter) in the case of transit of natural gas through the territory of the Republic of Poland (i.e. consisting in the so-called volume balancing).

Summing up, the obligation to maintain mandatory stocks does not extend to the volume of natural gas transported within the scope of economic activity consisting in supply of gas to the countries other than Poland through the territory of the Republic of Poland (natural gas transit).

Meanwhile, in the case of an undertaking that both imports gas into the territory of the Republic of Poland supplying local customers or consuming gas for its own use or transits natural gas through the territory of the Republic of Poland, it is important to determine the portion of gas brought from abroad representing importation and the portion of gas representing transit. As it is, the stockpiling obligation applies solely to the volume of natural gas imported for the purpose of supplying the Republic of Poland in natural gas (customers and own consumption).

Taking into account the regulations contained in the Stockpiling Act, this determination should be made while considering the method of pursuit of economic activity by a given entity and its quantitative dimension during the periods referred to in Articles 25.2 and 25.5 of that act, i.e. periods providing the basis for determination of the volume of mandatory natural gas stocks (during the transition period, also the period referred to in Article 37 of the act of 22 July 2016).

2. Rules applicable during transition period

2.1. In the interim regulations of the act of 22 July 2016, the legislator has provided for a special one-time procedure for determining the volume of mandatory natural gas stocks for the 2017/2018 gas year (Articles 36 and 37 of that act).

According to Article 36.1 of the act of 22 July 2016, an energy undertaking pursuing the economic activity consisting in importing natural gas for the purpose of its further resale to customers exempted, as at the effective date of the act, from the obligation to maintain mandatory natural gas stocks for a period shorter than by 30 September 2017 is obliged to maintain mandatory natural gas stocks from 1 October 2017 unless it has exceeded the volumes entitling it to exemption from the obligation to maintain mandatory

stocks prior to its expiry. Meanwhile, section 2 of that article stipulates that an entity importing natural gas is obliged to maintain mandatory natural gas stocks starting from 1 October 2017.

Under Article 37 of the act of 22 July 2016, the ERO President determines the volume of mandatory natural gas stocks for the period from 1 October 2017 until 30 September 2018 in the case of an energy undertaking pursuing economic activity consisting in international trading in natural gas or entity importing natural gas that, as at the effective date of the aforesaid act, does not maintain mandatory natural gas stocks, on the basis of the data on the volume of natural gas imported during the period from 1 January 2017 until 30 June 2017 derived from the statistical reports drafted by that undertaking or entity and from the data submitted pursuant to Article 49c.1 of the act amended in Article 1.

2.2. The above means that the aforesaid one-time procedure for determining the volume of mandatory natural gas stocks for the 2017/2018 gas year applies to the obliged entities that, as at the effective date of the act of 22 July 2016, i.e. on 2 September 2016, (1) were pursuing the economic activity consisting in importing natural gas for the purpose of its further resale to customers and (2) were not maintaining mandatory natural gas stocks.

At the same time, the stockpiling obligation for the aforesaid group of obliged entities arises as of 1 October 2017 except for the situation when an energy undertaking no longer benefits from an exemption from the obligation to maintain mandatory natural gas stocks prior to 1 October 2016. In the case of loss of entitlement to the said exemption from the obligation to maintain mandatory natural gas stocks, the obligation referred to in Article 24.1 of the Stockpiling Act materialises. This means that the energy undertaking is obliged to hold mandatory natural gas stocks as of the day of loss of that entitlement.

On the other hand, energy undertakings that engaged in the economic activity consisting in importing natural gas for the purpose of its further resale to customers after the effective date of the act of 22 July 2016, i.e. after 2 September 2016, are obligated to maintain mandatory natural gas stocks from the day of commencement of its importation in the volume determined under Article 25.5 of the act (as in item III 1.1.b).

2.3. Application for determination of the volume of mandatory natural gas stocks for the 2017/2018 gas year.

The volume of natural gas imported during the period from 1 January 2017 until 30 June 2017 constitutes the basis for determination of the volume of stocks for the period from 1 October 2017 until 30 September 2018.

Article 49c.1 of the Energy Law stipulates that the information on performance of contracts of purchase of gas from abroad for the last quarter is submitted within 30 days of the end of the quarter. Meanwhile, GAZ-3 statistical reports on the activities of natural gas undertakings are submitted by the 20th day of the month for the preceding month.

Consequently, given availability of the data for the aforesaid period, the applications for determination of the volume of mandatory natural gas stocks for the 2017/2018 gas year should be filed by the obliged entities not later than at the date of filing of the latter of the aforesaid two reports relating to the reporting period.

2.4. It should be stressed that when an undertaking imports natural gas during the period from 1 January 2017 until 30 June 2017 and continues to hold an international natural gas trading license (OGZ) on 1 October 2017, it is obliged to maintain mandatory stocks in the quantities arising from the volume of such importation starting from 1 October 2017. Discontinuance of importation prior to 1 October 2017 or declaration of intention to discontinue importation after the specified date is insufficient for the undertaking or entity that imported natural gas during the period from 1 January until 30 June 2017 to be able to benefit from an exemption from the obligation to maintain mandatory natural gas stocks.

The following are not subject to that obligation:

- undertakings that no longer hold an international natural gas trading license (OGZ) on 1 October 2017; please note that the filing of the application itself is not tantamount to withdrawal of the license; and
- entities that have not imported natural gas for own consumption as of 1 January 2017.

IV. Methods of fulfilment of the stockpiling obligation.

The Stockpiling Act provides for the following forms of fulfilment of the stockpiling obligation:

- 1) maintenance of stocks on the basis of a contract executed with an entity providing natural gas stockpiling services in the territory of the Republic of Poland (Article 24.3 of the act);
- 2) maintenance of stocks on the basis of a contract executed with an entity providing natural gas stockpiling services outside the territory of the Republic of Poland (Article 24a of the act); and
- 3) maintenance of stocks on the basis of a contract executed with another energy undertaking pursuing economic activity consisting in international trading in natural gas or entity importing natural gas (Article 24b of the act).

V. Fulfilment of obligation to maintain mandatory stocks of natural gas within storage facilities located outside the territory of Poland.

1. General principles

According to Article 24a.1 in conjunction with Article 24.3 of the Stockpiling Act, mandatory natural gas stocks may be maintained outside the territory of the Republic of Poland in the territory of another member state of the European Union or member state of the European Free Trade Agreement (EFTA), a party to the Agreement on the European Economic Area. Such possibility arises on the condition that:

- 1) technical parameters of the storage facilities and the gas networks to which these facilities are connected; and
- 2) executed contracts for provision of natural gas transmission services and contracts for provision of natural gas stockpiling services;

- provide for a possibility to supply the total volume of mandatory natural gas stocks maintained outside the territory of the Republic of Poland to the domestic gas transmission or distribution network within a period not longer than forty (40) days.

Article 24a.2 of the act obligates the obliged entities to present to the operator of the gas transmission system (i.e. OGP Gaz-System S.A., hereinafter also "TSO") the documents enabling review of the technical capabilities to supply to the domestic transmission or distribution network of the total volume of natural gas stocks maintained within the storage facilities outside the territory of the Republic of Poland, hereinafter the "stocks maintained outside the Republic of Poland".

Review of technical capabilities to supply to the network of the stocks maintained outside the Republic of Poland should be, consistently with the Stockpiling Act, conducted by OGP Gaz-System S.A., the only entity authorised to perform such review⁴.

When assessing fulfilment of the obligation to maintain stocks in the mode envisaged in Article 24a of the act, in addition to the contracts themselves and the documents presenting technical parameters (characteristics) of the storage facility, the obliged entity should present a **declaration** in which it acknowledges that:

- technical parameters of storage facilities and gas networks to which these facilities are connected and held contracts for provision of natural gas transmission services and contracts for provision of stockpiling services enable supply of the stocks maintained outside the Republic of Poland, on a continuous basis, to the Polish gas transmission network within a period not longer than 40 days, also in the case of introduction of a state of emergency referred to in Article 10.3c of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (OJ L 295, p. 1);
- natural gas stored within a storage facility outside the Republic of Poland within the framework of fulfilment of the obligation to maintain mandatory stocks of natural gas meets the qualitative requirements in force within the transmission or distribution network to which a given storage facility is connected and further acknowledges that natural gas introduced in the territory of the Republic of Poland will comply with TSO's qualitative requirements;
- in the cases referred to in Article 51 of the Stockpiling Act, it remains ready to supply mandatory stocks of natural gas and, once TSO has secured the approval of the minister competent for the affairs of energy referred to in Article 26.1 of the aforesaid act, will carry out TSO's instructions concerning commencement of supply from mandatory stocks.

2. Required documents

⁴ this applies also to gas distribution systems located in the territory of the Republic of Poland and not connected to the domestic transmission system;

The minimum⁵ scope of the documents that the obliged entity is to present to TSO for the purpose of fulfilment of the obligations arising under Article 24a of the Stockpiling Act is as follows:

- 1) contracts for provision of stockpiling services executed with the entities authorised to provide stockpiling services in the country designated in Article 24a of the Stockpiling Act. Contracts should specify:
 - active capacity of the storage facilities made available to the obliged entity which assures, as a minimum, stockpiling of the volume of natural gas constituting the mandatory stock set by the ERO President;
 - firm receiving capacity of the obliged entity within a given storage facility enabling supply of mandatory natural gas stocks maintained in that facility to the gas transmission network to which a given storage facility is connected, within a period not longer than 40 days (storage service for mandatory stocks must be offered, on a continuous basis, throughout the period of maintenance of mandatory stocks set by the ERO President and the receiving capacity, to the extent in which it assures supply of the mandatory stock within a period not longer than 40 days, cannot be subject to any restrictions);
- 2) document presenting the technical parameters (characteristics) of the storage facility in which the mandatory stock of natural gas is being maintained for the purpose of review of technical parameters in compliance with Article 24.2.3 of the Stockpiling Act; and
- 3) gas transmission contracts with transmission system operators enabling supply of stocks maintained outside the Republic of Poland to the Polish gas transmission network within a period not longer than 40 days. The presented contracts should allow the obliged entity to build a transport route for natural gas from the storage facility in which the mandatory stock is maintained to the Polish gas transmission network. Consequently, the contract should define transmission capacity at the relevant points of entry and exit as well as the terms of provision of service (firm transmission service throughout the term of maintenance of mandatory stocks set by the ERO President);
- 4) the declaration referred to in item V.1.

Review should apply, on the one hand, to the actual obligation to maintain mandatory stocks over relevant periods, consistently with item III hereof, and, on the other hand, to the contracts enabling fulfilment of that obligation. In particular, TSO should assess the terms of continuity and reliability of provision of services.

Based on the above information,⁶ TSO assesses the prospects for supply of mandatory stocks of natural gas to the gas transmission system within a period not longer than 40 days and communicates, for instance within 14 days of receipt of such information, the findings of that assessment to the obliged entity. When it is determined that the technical parameters of storage facilities and contracts linked to supply of the volumes covered by the mandatory stock do not enable supply of mandatory stocks within the set timeframe, TSO notifies the ERO President thereof, such notification to be made within seven (7) days of TSO becoming aware of the above situation.

An undertaking or entity intending to maintain stocks outside the Republic of Poland should ensure effective implementation of rules and obligations concerning the aforesaid stocks defined in the Stockpiling Act (in terms of volumes, supplying capacity and quality of natural gas maintained as mandatory stock) and effective verification of fulfilment of these obligations by the operator of the gas transmission system.

At the same time, the obligation to assure the possibility of carrying out an audit consistently with Article 30 of the Stockpiling Act rests with the obliged entity.

3. Requirement to execute firm gas transmission contracts

Execution of relevant firm gas transmission contracts assuring entry of natural gas into the Polish gas transmission system constitutes the key condition for maintenance of natural gas stocks outside the Republic of Poland. As stipulated in Article 24a.2 of the act, executed contracts for provision of natural

⁵ According to Article 75 Para. 1 of the Code of Administrative Procedure, anything that may contribute to clarifying the matter and that is not in violation of the law may be admitted as evidence (...);

⁶ decision as to the scope of required documents is made every time by OGP Gaz-System S.A. on a case-by-case basis; hence, it should be kept in mind that TSO is authorised to request other additional documents as needed;

gas transmission services are meant to enable supply of the total volume of mandatory natural gas stocks maintained outside the territory of the Republic of Poland to the domestic gas transmission or distribution network within a period not longer than 40 days. This means that, regardless of booking of stockpiling and transmission capacities within the systems located abroad, the entity obliged to maintain mandatory stocks should book firm capacities within the domestic system at the relevant point of entry to the domestic system, throughout the period of maintenance of mandatory stocks of natural gas.

4. Other aspects of fulfilment of obligation to maintain mandatory stocks of natural gas

4.1. The Stockpiling Act links the possibility to maintain stocks outside the territory of the Republic of Poland to contracts for (1) provision of natural gas transmission services and (2) provision of natural gas stockpiling services, which are deemed to constitute a closed catalogue (Article 24a.1.2 in conjunction with Article 24.3 of the Stockpiling Act).

Consequently, fulfilment of the stockpiling obligation under other contracts, i.e. swap commercial (civil law) contracts, contracts of lending for use, contracts for the benefit of third parties etc. is not possible. In particular, fulfilment of that obligation using virtual reverse flow capacity, in the mode consisting in supplying a specified volume of gas in a crisis situation to the *exit* point of another country by the supplier selected by the obliged entity in exchange for gas sourced from the mandatory stock maintained in the storage facility outside the territory of the Republic of Poland cannot be deemed to fulfil the statutory requirements applicable to maintenance of mandatory stocks pursuant to Article 24a of the act.

Obligatory stocks should be maintained in specific storage facilities meeting specific conditions and relevant contracts for provision of stockpiling services and transmission services should be executed that govern fulfilment by a given entity of the stockpiling obligation, to be rendered specific in terms of volume, conditions and place of maintenance of natural gas stocks. This obligation is subject to review by TSO and audit by the ERO President.

4.2. The provisions of the act do not restrict booking of capacities exclusively under long-term contracts (understood as contracts executed for a one-year or longer term). Capacities may also be booked within the framework of short-term products or combination of various products on the condition that the obliged entity possesses the required capacities on every day of the period to which the said obligation applies, which may be demonstrated through documentation of entitlement to one product or a combination of a number of products.

4.3. Held transmission capacity may be used commercially during the period when mandatory stocks are not being released. The Stockpiling Act does not impose any restrictions in this respect. Thus, no requirement exists to isolate dedicated transmission capacity used exclusively in emergency situations from the remaining transmission capacities for the purpose of supply of gas from mandatory stocks. Neither does the act incorporate any restrictions on related transmission contracts on the condition that the technical parameters of the services offered within two neighbouring systems allow for fulfilment of statutory requirements applicable to maintenance and release of mandatory stocks.

5. Operating procedures - recognition of stocks maintained outside Republic of Poland

The fact of maintenance of stocks outside the Republic of Poland should be incorporated in the procedures referred to in Article 49 of the Stockpiling Act to the development and possession of which the obliged entities are specifically obligated.

Such procedures apply in the event of interferences in supply of gas to the gas system or an unforeseen surge in gas consumption by customers and should be agreed with the entities in charge of their implementation, in particular in cooperation with TSO. They should also enable TSO to release stocks maintained outside the territory of the Republic of Poland.

VI. Obligatory stocks maintained under contracts of mandate.

1. General principles

1.1 Article 24b.1 of the Stockpiling Act stipulates that an obliged entity may commission, subject to the approval of ERO President expressed in the form of a decision, on a contractual basis, performance of the tasks consisting in maintenance of mandatory natural gas stocks to (1) another energy undertaking pursuing economic activity consisting in international trading in natural gas or (2) entity importing natural gas.

This provision introduces the possibility of fulfilment of the stockpiling obligation through execution of a contract of mandate for maintenance of mandatory stocks (the so-called stock ticket contract) made by the entity obliged to maintain mandatory stocks (the commissioning party) with another obliged entity

(the party accepting the mandate to maintain mandatory stocks). At the same time, the entity accepting the mandate cannot commission its performance to another entity.

1.2 The entity providing the stock ticket service may be registered both in Poland and in other countries. The criterion of place of incorporation of such entity is conditioned by the requirement that performance of the tasks consisting in maintenance of mandatory natural gas stocks be commissioned to (1) another energy undertaking pursuing economic activity consisting in international trading in natural gas or (2) entity importing natural gas.

1.3 Place of storage of mandatory stocks under a contract of mandate.

According to Article 24.3 of the Stockpiling Act, mandatory natural gas stocks are to be maintained in the territory of the Republic of Poland within the storage facilities connected to the gas transmission or distribution system, subject to Article 24a of the act.

Meanwhile, Article 24a.1 of the Stockpiling Act stipulates that mandatory natural gas stocks may be maintained outside the territory of the Republic of Poland in the territory of another member state of the European Union or member state of the European Free Trade Agreement (EFTA), a party to the Agreement on the European Economic Area, within the storage facilities connected to the gas system on the condition that:

- 1) technical parameters of the storage facilities and gas networks to which these facilities are connected enable supply of the total volume of mandatory natural gas stocks maintained outside the territory of the Republic of Poland to the domestic gas transmission or distribution network within a period not longer than 40 days; and
- 2) executed contracts for provision of natural gas transmission services and contracts for provision of natural gas stockpiling services enable supply of the total volume of mandatory natural gas stocks maintained outside the territory of the Republic of Poland to the domestic gas transmission or distribution network within a period not longer than 40 days.

The above means that, in the light of the Stockpiling Act, mandatory natural gas stocks are to be maintained in the territory of the Republic of Poland, as a rule. The possibility to maintain mandatory stocks in the territory of another EU member state or EFTA member state, a party to the EEA Agreement, constitutes an exception to that rule arising under Article 24.3 of the act. The provision of Article 24a.1 of the act formulates two conditions in this case.

The first condition refers to assurance of the possibility to supply the total volume of stocks to the domestic networks within a period not longer than 40 days. The second condition refers to execution of contracts (1) for provision of natural gas transmission services and (2) for provision of natural gas stockpiling services in such manner that these stocks are supplied to the domestic networks within a period not longer than 40 days.

As indicated above (in item V.4.1), Article 24a of the Stockpiling Act contains a closed catalogue of contract types. At the same time, Article 24.3 of the act that provides, by way of an exception to the rule formulated therein, for a possibility to maintain stocks in the territory of another EU or EFTA country (a party to the EEA Agreement), prohibits execution of contracts other than specified in Article 24a, including specifically the contracts referred to in Article 24b of that act. This leads to the conclusion that mandatory stocks under the stock ticket contract formula may refer solely to the stocks maintained in the territory of the Republic of Poland.

2. Stock ticket contract - scope

2.1. The scope of the stock ticket contract has been defined in Article 24b.3 of the act. Given the use of the expression “in particular” by the legislator therein, it may be assumed that the aforesaid contract can contain also provisions other than listed in the invoked regulation. In the light of the invoked regulation, a stock ticket contract defines, in particular:

- 1) volume of maintained mandatory stocks of natural gas during the term of the contract;
- 2) manner of performance of the commissioned task;
- 3) conditions assuring maintenance of an adequate, in quantitative and qualitative terms, level of mandatory gas stocks;
- 4) procedure to be followed during maintenance of mandatory gas stocks, their release and replenishment after release;

- 5) term of the contract and the term in question corresponds to or constitutes a multiple of the period referred to in Article 25.4 of the act;
- 6) place of maintenance of mandatory stocks of natural gas during the term of the contract;
- 7) mode of fulfilment of the obligations relating to drafting and submission of the information referred to in Article 27.1;
- 8) rules of cooperation in the event of an audit by the ERO President of fulfilment of the obligations referred to in Article 24;
- 9) provisions governing amendment of the terms and conditions of the contract and its termination;
- 10) parties' liability for any defaults on the terms and conditions of the contract.

2.2. Additionally, when mandatory gas stocks maintained in the stock ticket formula do not constitute assets of an energy undertaking pursuing economic activity consisting in international trading in natural gas or of an entity importing natural gas or commissioning maintenance of such stocks, the contract should incorporate also the provisions guaranteeing the commissioning party the right to purchase such stocks during its term and define the method of calculation of the reselling price of such stocks.

2.3. When an energy undertaking pursuing economic activity consisting in international trading in natural gas or an entity importing natural gas commissions maintenance, in its name, of mandatory stocks of natural gas to the entities listed in item 1.1, the entity accepting such commissioning:

- 1) may not use, for its own purposes, maintained mandatory stocks of natural gas during the term of the contract; and
- 2) warrants to grant the commissioning party access to maintained mandatory stocks of natural gas during the term of the contract.

3. Term of stock ticket contract

According to Article 24b.3.5 of the act, a stock ticket contract defines, in particular, the term of the contract and the term in question corresponds to or constitutes a multiple of the period referred to in Article 25.4 of the act. Meanwhile, Article 25.4 stipulates that mandatory stocks of natural gas in the volume reviewed by the ERO President are to be maintained during the period from October 1 of a given year until September 30 of the following year (gas year).

This means that a stock ticket contract may be executed for a gas year or for the period representing a multiple of a gas year.

4. Liability under stock ticket contract

The obliged entities commissioning performance of their tasks in the area of maintenance of mandatory stocks of natural gas to other entities are liable for fulfilment of qualitative requirements by those stocks, their maintenance in requisite quantities and fulfilment of the obligations relating to release of such stocks as a result of a decision of the minister competent for the affairs of energy, and for replenishment of such stocks (Article 24b.10 of the act).

Importantly, these entities must keep track of the method and place of maintenance of mandatory stocks of natural gas by the entity providing the stock ticket service. In the light of Article 24b.10 of the act, regulatory liability is borne by the entity statutorily obliged to fulfil the stockpiling obligation and not by the entity accepting the commissioning to maintain stocks. On the other hand, the entity accepting the commissioning to maintain stocks is liable also towards the commissioning entity under the general principles of civil law derived from the nature of a stock ticket contract as a contract of mandate within the meaning of the Polish Civil Code.

5. Approval of draft contracts and granting of consent to execution of stock ticket contracts by ERO President

5.1 According to Article 24b.6 of the act, the obliged entities commissioning maintenance of mandatory gas stocks submit the draft contract for performance of tasks in the area of maintenance of such stocks to the ERO President for approval by way of a decision, prior to execution of that contract.

The undertaking and the entity enclose, to the application for approval of the draft contract, the opinion issued by the operator of the gas transmission system or operator of combined gas transmission systems incorporating the findings of the review referred to in Article 24.2.3 of the act.

It needs to be stressed, at this point, that a draft of the contract which expressly specifies the method of fulfilment of the stockpiling obligation, including the requirements applicable to *essentialia negotii* defined in Article 24b.3 of the act, may be approved by the ERO President. On the other hand, no draft of a framework contract, i.e. a draft that does not specify explicitly the method of fulfilment of the stockpiling obligation in relation to a given undertaking or entity commissioning maintenance of mandatory stocks under a stock ticket contract, can be approved by the ERO President.

Under Article 24b.7 of the act, the ERO President grants his consent or refuses to grant his consent, by way of a decision, to execution of the stock ticket contract referred to in Article 24b.1 of the act within 30 days. The grounds for the ERO President's refusal to grant consent to execution of the aforesaid contract have been defined in Article 24b.8 of the act. The regulation in question stipulates that the ERO President refuses to grant his consent to execution of a stock ticket contract if:

- 1) draft of this contract does not incorporate the provisions referred to in section 3 [i.e. in item 2.1 above]; or
- 2) location or technical parameters of the storage facilities and gas networks to which these facilities are connected do not enable supply of the total volume of mandatory natural gas stocks to the gas system within a period not longer than 40 days.

As regards the above regulations, attention should be drawn to the relatively short time limit set in Article 24b.7 of the act for granting the consent or refusing to grant the consent to execution of the stock ticket contract, which means that the positive outcome of the proceedings in the aforesaid case is conditioned by quality of the application filed by the undertaking or entity.

Thereafter, an energy undertaking pursuing economic activity consisting in international trading in natural gas and an entity importing natural gas submit copies⁷ of the aforesaid contract to the ERO President within 14 days of its execution.

5.2 Under special circumstances, the method of fulfilment of the stockpiling obligation may be subject to change over individual periods. These changes may involve the maintained stock, in part or in full, and apply, *inter alia*, to the method of fulfilment of the stockpiling obligation (invoked in item IV of this document and derived, respectively, from Articles 24, 24a and 24b of the act), place of maintenance of mandatory stocks, assigned volumes etc. In the case of stock ticket contracts, amendments to the objectively material components of these contracts call for execution of a new contract, which implies the need for fulfilment of the requisite procedures derived from the act and governing review of technical capabilities by the transmission system operator, approval of the draft contract and granting of consent to execution of the stock ticket contract by the ERO President.

Therefore, if the need arises for amending the objectively material components of a stock ticket contract, the obliged entity should file with the ERO President an application for approval of the draft of the new stock ticket contract and, thereafter, an application for granting of consent to execution of that contract or, alternatively, an application, under Article 155 of the Code of Administrative Procedure, to overturn the decision approving the draft contract and, thereafter, an application to overturn the decision granting consent to execution of that contract.

⁷ Certified for consistency with the original in compliance with Article 76a Para. 2 of the Code of Administrative Procedure which stipulates that a party may submit, in the stead of the original document, a copy of the document, if its consistency with the original has been certified by a notary or by the party's legal representative appearing in the case who is an attorney, legal counsel, patent attorney or tax advisor.