

Brussels, 4 March 2020

Position of the PKEE on the European Climate Law proposal

Members of the Polish Electricity Association (PKEE) are aware of the climate change challenges and share the Commission's ambition to jointly tackle them. The Polish energy sector is already preparing for a further transformation in a sustainable development direction, ensuring energy security and affordable energy prices. However, the achievement of the ambitious goal of climate neutrality by changing the Polish energy mix will require significant investment outlays and may result in deteriorating the socio-economic situation of the affected regions. The net-zero emissions economy in 2050 requires significant investment outlays, estimated to reach EUR 179-206 billion (CAKE, KOBiZE¹) for the power generation in Poland. Therefore, it is necessary to foresee in the European Climate Law² (hereinafter also as "ECL") a proportional compensation for the additional carbon cost resulting from the higher climate ambitions. Otherwise, the financial resources of utilities will be dedicated to cover the actual operational costs, instead of being devoted to the new investments in line with the transition aimed at reaching the climate objectives.

Climate neutrality objective needs to be accompanied by coherent support policy instruments

The Polish energy sector is committed to ensure its contribution to the EU climate and energy objectives by reducing its carbon footprint. It needs to be however noted by the Commission that such shift towards cleaner technologies requires significant investments, in both the transition and destination technologies. There are different starting points and therefore investment needs in particular Member States differ significantly. Therefore, the Commission should avoid a "one-size fits all" approach within Green Deal regulatory framework.

The PKEE is therefore concerned that the proposal for Climate Law is not referring to the financial dimension of the transition. Such financial assistance could be provided through the already existing mechanisms, which would implement clear and well-known rules for applicants. The PKEE recommends to the Commission to assess the potential of the Modernisation Fund in terms of providing financial support for regions with higher share of coal in their energy mixes. Part of this support should be provided in the form of ensuring an increased number of allowances dedicated to the Member States covered by the Modernisation Fund. Additionally, financial support should be introduced by increasing (at least doubling) the "solidarity pool" as well as through the Just Transition Fund. The latter, however, should be amended in order to ensure that more funds are available to the most affected regions as well as with less strict exclusions³. It is of crucial importance to ensure that the Climate Law implements clear and efficient mechanisms aimed at mitigating the risks stemming from the increased level of ambitions.

¹ CAKE, Scenarios of low-emission energy sector for Poland and the EU until 2050 2019, available at: http://climatecake.pl/wp-content/uploads/2019/11/CAKE_energy-model_EU_low_emission_scenarios_paper_final.pdf

² Proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM(2020)final

³ For more details, please refer to PKEE position on JTF (<https://www.pkee.pl/en/position-paper-of-the-polish-electricity-association-on-the-regulation-establishing-the-just-transition-fund/>)

Revision of 2030 targets should be preceded by Impact Assessment

The proposal has also provided the legal basis for revision of 2030 climate and energy targets. According to Article 2 of the Climate Law proposal, the Commission wants to “explore options for a new 2030 target of 50 to 55% emission reductions compared to 1990” by September 2020. The climate and energy targets have been agreed in 2019 (under the “Clean Energy for All Europeans” package and the revision of EU ETS directive), and in order to ensure a sufficient level of legal and business certainty, should not be amended at very short notice and without a sufficient impact assessment referring to the expected costs for each region and individual Member States. Moreover, the Impact Assessment should also explore how the new targets would impact the price of allowances, and therefore how it would increase the transition costs for the Member States relying on more emitting technologies.

Ensuring that no one is left behind in the transition requires for this assessment to cover the costs of the transition in each Member State. Knowledge- and data-based approach would ensure that all Member States can be on board and would provide the necessary information to determine the best level of ambition and pace of transition for each Member State. Given that the Member States are currently at an early stage of implementation of the “Clean Energy for All Europeans” package, an impact assessment of the currently set 2030 targets and “exploring options for a new 2030 target of 50 to 55% emission reductions” would not be possible by September 2020. Finally, the PKEE draws the Commission’s attention to the fact that the potential increase of 2030 climate targets will need to be preceded by political consent of all Member States expressed in the conclusions of European Council.

It must be clear that the trajectory is indicative

The PKEE is also concerned about the trajectory referred to in Article 3 of the proposal. It should be clear that this trajectory is indicative and no additional obligations are stemming from it. In its latest proposal, the Commission makes this trajectory a benchmark for the assessment of the level of Member States’ ambitions. The PKEE is of the opinion that this assessment should refer to the EU target of climate neutrality. It will allow the Member States to adjust the pace of the transition to their regional and national circumstances and to undertake the most cost effective measures.

The Commission should not be entitled to review the targets without Union-wide consent

In the opinion of the PKEE, while the delegated acts find justification in case of more technical and dynamic issues, the climate targets should not be set in non-legislative acts. The GHG reduction targets impact the whole EU and therefore should take into account a vast range of issues, including their impact on economy of each Member State, citizens’ welfare as well as the impact on the EU economy’s global competitiveness. Therefore, any revision should first be a subject to political debate, market-wide analysis and should be accompanied by measures aimed at providing support to the most vulnerable regions/Member States. The scope of delegation proposed by the Commission also raises our concerns regarding its compliance with the Treaty on the Functioning of the European Union, particularly with art. 290 of TFEU (“**The essential elements** of an area shall be reserved for the legislative act and accordingly **shall not be the subject to a delegation of power.**”).