



2026/341

24.2.2026

COMMISSION DECISION (EU) 2026/341

of 11 August 2025

granting the Republic of Poland a derogation from Article 22(4), point (b) of Regulation (EU) 2019/943 of the European Parliament and of the Council as regards the Polish capacity mechanism

(notified under document C(2025) 5575)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity ⁽¹⁾, as amended by Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design ⁽²⁾, and in particular Article 64 thereof,

Whereas:

1. PROCEDURE AND THE SCOPE OF THE DECISION

- (1) On 4 February 2025, the Republic of Poland ('Poland') submitted to the Commission a request for derogation ('the derogation') from the requirement in Article 22(4), point (b) of Regulation (EU) 2019/943 ('the Electricity Regulation') pursuant to Article 64(2b) of the Electricity Regulation ('the application').
- (2) The requested derogation would apply from 1 July 2025 to 31 December 2028.
- (3) On 14 February 2025, the Commission published the application on its website and invited Member States and stakeholders to submit their comments by 17 March 2025. One stakeholder submitted comments.
- (4) Poland submitted additional information on 28 February, 26 March, 9, 17 and 25 April, 5, 7 and 15 May, and 2 June 2025.

2. THE EXISTING CAPACITY MECHANISM

- (5) The application concerns the capacity mechanism currently in place in Poland ('existing capacity mechanism'), which received State aid clearance under the Commission decision of 7 February 2018 ⁽³⁾ ('the State aid decision'). In its application, Poland confirmed that the main features of the existing capacity mechanism have remained unchanged since the adoption of the State aid decision. This Decision refers to the State aid decision for a detailed description of the existing capacity mechanism.
- (6) The main changes to the existing capacity mechanism since the adoption of the State aid decision stem from the requirements of the Electricity Regulation, which entered into force on 4 July 2019, laying down, for the first time, detailed rules on capacity mechanisms in EU secondary legislation.

⁽¹⁾ OJ L 158, 14.6.2019, p. 54.

⁽²⁾ OJ L, 2024/1747, 26.6.2024, ELI: <http://data.europa.eu/eli/reg/2024/1747/oj>.

⁽³⁾ Commission Decision of 7 February 2018 in State aid No SA.46100 (2017/N) – Poland – Planned Polish capacity mechanism.

- (7) According to Article 22(4)(b) of the Electricity Regulation, from 1 July 2025 at the latest, generation capacity that started commercial production before 4 July 2019 ('existing plants') and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity ('the emission limit') and more than 350 kg CO₂ of fossil fuel origin on average per year per installed kW_e ('the carbon budget limit') must not be committed or receive payments or commitments for future payments under a capacity mechanism. This prohibition does not apply to commitments or contracts concluded before 31 December 2019.
- (8) Poland has incorporated the emission limit into its national legislation, preventing existing plants that exceed the emission limit from participating in auctions held after 31 December 2019, and has set out the rules for calculating the emission limit for each capacity market unit. Consequently, from 1 July 2025, existing plants that exceed the emission limit are no longer eligible for payments or commitments for future payments under the existing capacity mechanism, without prejudice to commitments or contracts concluded before 31 December 2019.
- (9) The existing capacity mechanism is a market-wide mechanism in the form of a capacity obligation, under which market participants receive a fixed capacity remuneration in exchange for availability during working days between 07:00 and 22:00 and during periods of system stress.
- (10) As stated in recital 4 of the State aid decision, the existing capacity mechanism is open to new, refurbished and existing generators, demand response and storage operators, located in Poland or in neighbouring EU Member States. The existing capacity mechanism excludes capacity providers that receive other forms of support (see recital 18 of the State aid decision). Cross-border participation is allowed under the existing capacity mechanism as set out in Section 2.5 of the State aid decision. Capacity providers located in neighbouring zones can participate directly in the existing capacity mechanism (in line with the target solution set out in the State aid decision). Foreign capacity participation must not exceed the forecasted level of imports to Poland during system stress events. The maximum entry capacity for cross-border participation for each delivery year is calculated in line with the methodology set out in Article 26(7) of the Electricity Regulation, on the basis of latest approved European resource adequacy assessment (ERAA) report.
- (11) The pre-qualification requirements applicable to capacity providers are set out in detail in advance, as described in Section 2.3.2 of the State aid decision.
- (12) As stated in recital 37 of the State aid decision, a capacity auction is held every year for a given delivery year, with a five-year lead time ('main auction'). Additional auctions for each quarter of a given delivery year are held in the year preceding that delivery period ('additional auction'). For the purposes of this Decision, main auctions and additional auctions are collectively referred to as 'primary auctions'.
- (13) The auction format is outlined in Section 2.4.2 of the State aid decision. Each auction is a descending-clock, pay-as-clear auction, in which all winning capacity units receive the same price for fulfilling their capacity obligations. The auctioneer announces a high price at the beginning of the auction, and eligible participants submit bids indicating how much capacity they are willing to supply at that price. This process is repeated in successive rounds according to a predetermined schedule. In each round, capacity market units may withdraw from subsequent rounds by submitting an exit offer. The auction closes when the lowest price at which demand meets supply is identified.
- (14) The amount of capacity to be procured through primary auctions is determined on the basis of the procedure laid down in Section 2.4.1 of the State aid decision:
 - The amount of capacity to be auctioned is based on the reliability standard, which the Polish government has set at 3 hours of loss of load expectation ('LOLE') per year.
 - Polskie Sieci Elektroenergetyczne S.A. – the Polish transmission system operator ('TSO') – assesses different scenarios for the level of electricity demand and the amount of capacity provided by power plants that are not eligible for capacity payments (e.g. renewable energy sources ('RES') receiving support under other support schemes). On the basis of that analysis, the TSO submits a recommendation to the government and the Polish national regulatory authority ('NRA') on the amount of capacity needed to meet the reliability standard.

- The TSO's recommendations on the amount of capacity to be contracted through auctions to meet the reliability standard are updated ahead of each auction to reflect the latest developments in forecasted demand, planned commissioning and decommissioning of capacities, evolving regulatory framework and market circumstances. Therefore, the amount of capacity to be procured at each auction may differ from the amount calculated for the preceding auction covering the same delivery period.
 - The NRA proposes the auction target capacity (ATC) to the government and gives an opinion on the values of the other parameters proposed by the TSO before the government makes the final decision on how much capacity to procure in each auction. The government then sets the parameters of the demand curve as set out in Section 2.4.1 of the State aid decision. The demand curve is a sloping curve with a floor price of 0,12 PLN/kW (with the lowest possible price being 0,01 PLN/kW per month). The demand curve is designed so that less capacity is procured in a given auction if prices are high, and vice versa.
- (15) The duration of capacity contracts awarded through auctions depends on the capital expenditure (CAPEX) that capacity market units must incur to deliver their capacity (recital 42 of the State aid decision). One-year agreements may be granted to capacity market units that do not incur any significant CAPEX (i.e. mainly existing capacity). Such agreements may be granted through both main and additional auctions.
- (16) Capacity agreements longer than one year are only available to participants in main auctions. In particular:
- a) units with CAPEX above 0,5 million PLN/MW ($\pm 20\%$) are eligible for agreements of up to five years;
 - b) new units with CAPEX above 3 million PLN/MW ($\pm 20\%$) are eligible for agreements of up to 15 years;
 - c) units that meet the 450 gCO₂/MWh emission performance standard are eligible for agreements of up to 7 or 17 years if they meet the conditions in points a) and b) above.
- (17) If there is a tie in a capacity auction, preference will be given to lower-emissions capacity (see recital 40 of the State aid decision). This measure and that referred to in point c) above are jointly referred to as the 'green bonus'.
- (18) In additional auctions, capacity providers may be awarded between one and four quarterly capacity contracts ranging from 3 to 12 months.
- (19) Capacity obligations resulting from primary auctions may be traded on the secondary market in accordance with Section 2.6 of the State aid decision.
- (20) As indicated in recital 93 of the State aid decision, successful capacity providers are required to deliver energy whenever needed to ensure security of supply, i.e. during system stress events. Failure to fulfil this obligation will result in penalties, as set out in Section 2.7.3 of the State aid decision.

3. DESCRIPTION OF THE REQUESTED DEROGATION

3.1. Conditions pursuant to Article 64(2c) of the Electricity Regulation

- (21) Article 64(2c) of the Electricity Regulation provides for a two-tier auction process to implement the derogation, comprising a primary and a supplementary auction process.

3.1.1. Primary auction processes (main and additional auctions)

- (22) The first main auction took place in November 2018. The first additional auction took place in 2020. Poland reports that the main auctions for delivery years 2025 to 2028 have taken place, as have the additional auctions for 2025 and 2026. Poland submits that all primary auctions carried out after 31 December 2019 for a delivery period starting after 1 July 2025 constitute primary auctions within the meaning of Article 64(2c)(a) of the Electricity Regulation.

- (23) Poland submits that the organisation of primary auctions for delivery periods starting after 1 July 2025 ensures that only capacity providers that meet the emission limit can participate and that their participation is maximised, as they do not face competition from providers that do not meet the emission limit. Moreover, low-emitting capacity can benefit from the green bonus. In addition, contracts awarded in primary auctions, and in particular in main auctions, have a much longer duration than those that would be awarded in supplementary auctions should the derogation be granted.
- (24) In its application, Poland argues that the primary auctions that have been and will be ⁽⁴⁾ carried out for the delivery years 2025 to 2028 would not solve the adequacy concerns for those delivery periods. It also maintains that, in the absence of the derogation, existing generating units that do not meet the emission limit but are necessary to guarantee system adequacy would be decommissioned because of negative economic viability.
- (25) Such adequacy concern has been identified on the basis of the results of the 2024 national resource adequacy assessment ('NRAA') ⁽⁵⁾, which also serves as a basis for estimating the total amount of capacity needed to meet the reliability standard ('required capacity obligation', see Table 1 below).

Table 1

Tab. 5.3 Auctions capacity to ensure compliance with the reliability standard for end consumers in the years 2025 –2028

Delivery period		Required Capacity Obligations
Second half of 2025	MW	24 122
2026	MW	24 872
2027	MW	25 323
2028	MW	25 717

Source: Polish NRAA.

- (26) Poland submits that, after deducting from the required capacity obligation the volumes already contracted through the primary auctions for the delivery years covered by the derogation (see Table 2 below) as well as other capacities considered available to the system (e.g. those supported through other schemes), a gap still remains. The ATC represents the amount of capacity to be contracted in each auction in accordance with the methodology described in recital (14) above. All values are given in MW.

Table 2

Year	ATC (main auction)	Main auction contracted volume	ATC (additional auction Q1)	ATC (additional auction Q2)	ATC (additional auction Q3)	ATC (additional auction Q4)	Additional auction Q1 contracted volume	Additional auction Q2 contracted volume	Additional auction Q3 contracted volume	Additional auction Q4 contracted volume
2025	2 526	2 367,304	3 520	1 131	500	842	3 144,653	1 142,555	524,569	830,866
2026	7 991	7 188,584	2 450	100	100	5 010	2 022,723	87,524	93,524	2 387,759
2027	6 237	5 379,156	1 909	100	100	1 284	n/a	n/a	n/a	n/a
2028	5 791	7 070,951	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Source: Ministry of Climate and Environment, Poland.

⁽⁴⁾ Additional auctions for delivery years 2027 and 2028, to be carried out in 2026 and 2027 respectively.

⁽⁵⁾ PSE S.A., Publication of a report pursuant to Article 15(i) of the Energy Law, <https://www.pse.pl/-/publikacja-raportu-zgodnie-z-art-15-i-ustawy-prawo-energetyczne?safeargs=696e686572697452656469726563743d747275652672656469726563743d253246686f6d65>.

3.1.2. Supplementary auctions

- (27) Poland proposes introducing supplementary auctions that would also be open to existing plants that exceed the emission limit. Poland explains that the supplementary auctions for a given year will be organised only when the need for additional capacity is justified on the basis of the NRAA results and only if the following conditions are met:
- (a) the main and additional auctions for the given delivery period have been concluded; and
 - (b) the main and additional auctions have failed to procure a volume of capacity sufficient to meet the reliability standard for a given delivery period.
- (28) Poland explains that, if these conditions are met for each of the delivery years covered by the requested derogation, it would carry out four supplementary auctions for the following delivery periods: the second half of 2025 (semi-annual contract) and delivery years 2026, 2027 and 2028 (annual contracts).
- (29) Table 3 provides an overview of the two-tier auction process and the years in which each auction (main, additional and supplementary, if necessary) would take place.

Table 3

SA delivery period	2020	2021	2022	2023	2024	2025	2026	2027	2028
2nd half of 2025	MA				AA	SA + DP			
2026		MA				AA + SA	DP		
2027			MA				AA + SA	DP	
2028				MA				AA + SA	DP


 Ministry of Climate and Environment
 Republic of Poland

MA – main auction, AA – additional auction, SA – supplementary auction, DP – delivery period

Source: Ministry of Climate and Environment, Poland.

- (30) Poland has informed the Commission that the first supplementary auction (for delivery in the second half of 2025) was carried out on 15 May 2025, with an ATC of 5 444 MW. This specific ATC was verified by the NRA in its letter of 14 May 2025. On the basis of the preliminary results of the auction, the following technologies were selected: coal, gas, RES, demand response and cross-border capacity, resulting in a total of 5 050,856 MW capacity obligations being contracted. Poland has confirmed that the capacity agreements concluded in the supplementary auctions will not be executed until this Decision is adopted ⁽⁶⁾.
- (31) Poland has confirmed that the supplementary auctions apply the same conditions as the primary auctions under the existing scheme, as described in Section 2 above, except for the eligibility criteria (see recital (32)), the frequency of the auctions (see recitals (28) and (29)), the formula applied to determine the amount of capacity to be procured, including cross-border capacity (see recital (35)), and the contract duration (see recital (28)). These elements have been adjusted in order to comply with the conditions of Article 64(2b) of the Electricity Regulation.
- (32) In addition to the units eligible to participate in primary auctions, existing plants that exceed the emission limit are allowed to participate only in supplementary auctions.
- (33) By 30 April of the year preceding the delivery period, the TSO will either announce the date on which the supplementary auction will be held or, if the reliability standard can be met through the main and additional auctions (on the basis of the NRAA), confirm that no supplementary auction will be held for the delivery period concerned.

⁽⁶⁾ As set out in Article 6 of the Polish Act of 24 January 2025 amending the Capacity Market Act (*Journal of Laws* 2025, item 159).

- (34) Poland explains that the NRA and the Ministry of Climate and Environment give their opinion on the NRAA or its update. This opinion is published by the TSO and serves as a basis for calculating the capacity volume to be procured in the supplementary auction for a given delivery period.
- (35) According to Poland, in order to determine the appropriate amount of capacity to be procured in each supplementary auction, the TSO applies the following formula: ATC = total required capacity obligations (as identified in the NRAA, see Table 1 in recital (25)) – capacity that has been contracted through primary auctions (main and additional) – capacity with guaranteed revenues (e.g. RES supported under other schemes).
- (36) On the basis of the above formula, Poland estimates the ATC for the supplementary auctions for 2025 and 2026 at approximately 5,4 GW and 6,9 GW respectively. The ATC for 2027 and 2028 will be calculated after the additional auctions for these delivery years have been carried out.
- (37) According to the application, annual capacity contracts may not exceed the duration of the derogation, and capacity payments will therefore be committed only up to the end of 2028.

3.2. Identification of the adequacy concern

3.2.1. The reliability standard

- (38) Article 25(1) of the Electricity Regulation requires Member States to have a reliability standard in place when applying capacity mechanisms, which indicates ‘the necessary level of security of supply of the Member State’.
- (39) According to Article 25(2) of the Electricity Regulation, the reliability standard must be set by the Member State or by a competent authority designated by the Member State, following a proposal by the NRA. The reliability standard must be based on the methodology set out in Article 23(6) of the Electricity Regulation.
- (40) Article 23(6) of the Electricity Regulation provides for the establishment of an EU methodology for calculating the value of lost load (‘VOLL’) ⁽⁷⁾, the cost of new entry (‘CONE’) and the reliability standard (‘RS’) ⁽⁸⁾.
- (41) In 2024, the Polish Ministry of Climate and Environment reviewed the reliability standard and set it at 3 hours of LOLE ⁽⁹⁾ per year, which corresponds to the value established in Section 2.2.1 of the State aid decision. According to Poland, the standard was based on calculations made in line with the RS methodology adopted by the EU Agency for the Cooperation of Energy Regulators (‘ACER’) and using the parameters calculated by the NRA ⁽¹⁰⁾ and the European resource adequacy assessment (‘ERAA’) for 2023 (‘ERAA 2023’) results. The decision is publicly available ⁽¹¹⁾.

3.2.2. Resource adequacy assessments

- (42) Article 20(1) of the Electricity Regulation requires Member States to monitor resource adequacy within their territory based on the ERAA referred to in Article 23 of the Regulation. To complement the ERAA, Member States may also carry out an NRAA pursuant to Article 24 of the Regulation.

⁽⁷⁾ Article 2(9) of the Electricity Regulation defines VOLL as ‘an estimation in euro/MWh, of the maximum electricity price that customers are willing to pay to avoid an outage’.

⁽⁸⁾ On 2 October 2020, ACER approved the methodology for calculating the VOLL (‘VOLL methodology’), the CONE (‘CONE methodology’) and the reliability standard (‘RS methodology’), collectively referred to as ‘methodology for adequacy metrics’: https://acer.europa.eu/sites/default/files/documents/Decisions_annex/ACER%20Decision%2023-2020%20on%20VOLL%20CONE%20RS%20-%20Annex%20I.pdf.

⁽⁹⁾ This is defined as the average number of hours per year in which supply is expected to be lower than demand under normal operation of the system.

⁽¹⁰⁾ The Polish NRA has calculated the VOLL at 80,6 thousand PLN/MWh and the CONE as follows: fixed CONE at 559 608 PLN/MWh and variable CONE at 0 PLN/MWh.

⁽¹¹⁾ Available online at <https://dziennikustaw.gov.pl/DU/2024/1389>.

- (43) According to Articles 23(3) and 24(1) of the Electricity Regulation, the European Network of Transmission System Operators for Electricity ('ENTSO-E') should develop a methodology based on the principles provided for in Article 23(5) of the Electricity Regulation, to be used for the ERAA and any NRAA⁽¹²⁾. While the ERAA is based on a central reference scenario of projected demand and supply, which the NRAA must also include, the NRAA may also take additional sensitivities into account (see Articles 23(5) and 24(1) of the Electricity Regulation).
- (44) On 2 May 2024, ACER approved ERAA 2023. This was the first time that an ERAA was formally approved.
- (45) ERAA 2023 models four target years (2025, 2028, 2030, and 2033). The central reference scenario results for Poland in ERAA 2023 are presented in Table 4 below. Where the reported LOLE is below 3, the reliability standard is considered met, meaning no resource adequacy concern has been identified. The results of ERAA 2023 show no adequacy concerns for target years 2025, 2028 and 2030. However, for 2033 the reliability standard is exceeded. In sum, ERAA 2023 identifies an adequacy concern in Poland only for target year 2033.

Table 4

ERAA 2023 adequacy results, LOLE⁽¹³⁾

Assessment	2025	2028	2030	2033
Polish reliability standard	3,0	3,0	3,0	3,0
ERAA 2023	0,1	1,8	2,5	8,5

- (46) On 7 April 2025, ENTSO-E submitted its proposal for ERAA 2024 to ACER⁽¹⁴⁾. Following the submission, ACER began its review of the draft ERAA 2024 in accordance with Article 23(7) of the Electricity Regulation.
- (47) While it is still under review and subject to approval or amendment by ACER, ERAA 2024 identifies an adequacy concern for all target years covered by the derogation (2025 to 2028), although the size of the concern is smaller than that identified in the NRAA, as shown in Table 5 below.

Table 5

ERAA 2024 adequacy results, LOLE

Assessment	2026	2028	2030	2035
Polish reliability standard	3,0	3,0	3,0	3,0
ERAA 2024	3,9	13,7	9,2	9,8

⁽¹²⁾ On 2 October 2020, ACER approved the methodology for the ERAA ('the ERAA methodology') in accordance with Article 23(3) of the Electricity Regulation. See the ACER Decision on the ERAA methodology at https://www.acer.europa.eu/sites/default/files/documents/Individual%20Decisions_annex/ACER%20Decision%2024-2020%20on%20ERAA%20-%20Annex%20I_1.pdf.

⁽¹³⁾ Available at <https://www.entsoe.eu/eraa/2023/>.

⁽¹⁴⁾ Available at <https://www.entsoe.eu/eraa/2024/>.

- (48) The NRAA contains a central reference scenario without new capacity mechanism contracts (referred to as the 'baseline scenario' in the Polish NRAA) and a scenario with new capacity mechanism contracts (referred to as the 'scenario with capacity mechanism'). The latter includes capacity to be procured under the existing capacity mechanism, through supplementary auctions and through other mechanisms, such as future capacity mechanisms. The NRAA models 16 target years (from 2025 to 2040). The baseline scenario is the relevant scenario for demonstrating adequacy concerns. In the ACER opinion on the NRAA (see recital (51) below), it is compared with the ERAA 2023 central reference scenario, as it represents a corresponding and comparable approach to the ERAA 2023 central reference scenario, that similarly did not include new capacity mechanism contracts.
- (49) The Polish NRAA results for LOLE and the expected energy not served ('EENS') under the baseline scenario are presented in Table 6.

Table 6

NRAA results

Year		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
LOLE	h/a	7,6	40,8	50,2	33,3	20,5	9,6	6,6	14,3	15,0	14,4	10,9	10,8	12,5	10,4	5,8	14,2
EENS	GWh/a	5,8	40,6	54,4	52,1	31,8	13,8	9,4	22,7	24,3	23,6	18,1	23,5	25,3	23,3	13,5	33,6

Source: PSE data compiled for the preparation of the NRAA.

- (50) The results of the NRAA under the baseline scenario show a higher LOLE than the ERAA 2023 results for all four target years considered (2025, 2028, 2030 and 2033). In particular, the reliability standard is exceeded in all the years modelled in the NRAA baseline scenario.

3.2.3. ACER's opinion pursuant to Article 24(3) of the Electricity Regulation

- (51) Poland submitted the Polish NRAA to ACER for an opinion, in accordance with Article 24(3) of the Electricity Regulation. As ACER approved an ERAA for the first time in 2024 (see recital (44) above), Article 24(3) of the Electricity Regulation, which requires Member States to submit their NRAAs to ACER for an opinion in cases of divergences between the NRAA and the ERAA was, de facto, not applicable in the previous years.
- (52) On 3 February 2025, ACER issued an opinion including recommendations on the Polish NRAA ⁽¹⁵⁾. In its opinion, ACER explained that the differences between the Polish NRAA and ERAA 2023 were justified in terms of the assumptions on capacity resources but not justified when it comes to the assumptions regarding cross-zonal exchanges. Regarding the difference in the modelling of capacity resources, ACER could not conclude whether the difference was justified.
- (53) In its opinion, ACER made the following recommendations:
- (a) with regard to the assumptions regarding cross-zonal exchanges, the import and export assumptions should be improved in the Polish NRAA to better reflect the functioning of the interconnected European electricity market. For example, foreign bidding zones and regions should be modelled on the basis of the datasets available in ERAA;
 - (b) with regard to the assumptions on capacity resources, the same national-specific costs used in the NRAA should also be used in ERAA;

⁽¹⁵⁾ ACER Opinion No 01/2025 of 3 February 2025 on the differences between the national resource adequacy assessment of Poland and the 2023 European resource adequacy assessment.

- (c) with regard to the modelling of capacity resources, the economic viability assessment ('EVA') should be updated to properly consider future revenues and costs. ACER recommends, in particular, providing further clarity on the economic outcomes of the EVA and substantiating the assumption that no additional demand response or storage will enter the Polish system beyond the capacity contracted in the capacity mechanism.

3.2.4. Report pursuant to Article 24(3) of the Electricity Regulation

- (54) The last subparagraph of Article 24(3) of the Electricity Regulation requires the body responsible for the NRAA to take due account of ACER's opinion, and, where necessary, to amend its assessment. Where it decides not to take ACER's opinion fully into account, the body that is responsible for the NRAA must publish a report with detailed reasons.
- (55) On 22 April 2025, the Polish TSO published a report in response to ACER's opinion on the differences between the NRAA and ERAA 2023 ⁽¹⁶⁾. In its report, the Polish TSO made the following points.
 - On the differences in assumptions on cross-zonal exchanges, the simplified approach applied to regional modelling has a limited impact on the NRAA results. The NRAA applies an approach to import assumptions that is consistent with the cross-border participation methodology (Article 26(11)(a) of the Electricity Regulation) ⁽¹⁷⁾. The divergence in export assumptions is justified by the fact that Poland is primarily an importing bidding zone, and modelling exports in the NRAA would merely reduce RES curtailments without enhancing the economic viability of existing plants. Consequently, the NRAA export assumptions would not affect the capacity mix or significantly alter adequacy risks.
 - The divergence in assumptions on capacity resources is due to the different timing of input collection for both studies (the first half of 2024 for the NRAA and the end of 2022 for ERAA 2023).
 - On the differences in the modelling of capacity resources, the EVA calculations in the NRAA constitute a more accurate and representative approach than that used in the ERAA. On the divergence in demand response and storage assumptions, the Polish TSO states that its calculations show no investment decisions for storage before 2029, and that market-driven deployment of storage would be expected from 2036 onwards. On demand response, the Polish TSO explains that in contrast to ERAA 2023, the NRAA also models implicit demand response. The divergence in patterns of planned maintenance of power plants is more in line with real-life observations than those considered in the ERAA 2023.

3.3. Report accompanying the requested derogation

- (56) According to Article 64(2d) of the Electricity Regulation, an application for derogation must be accompanied by a report, which must include:
 - (a) an assessment of the impact of the derogation in terms of greenhouse gas emissions, and on the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response;
 - (b) a plan with milestones to transition away from the participation of generation capacity referred to in paragraph 2b in capacity mechanisms by the date of the expiry of the derogation, including a plan to procure the necessary replacement capacity in line with the indicative national trajectory for the overall share of renewable energy and an assessment of the investment barriers causing the lack of sufficient bids in the competitive bidding procedure referred to in paragraph 2c, point (a).

⁽¹⁶⁾ Available at https://www.pse.pl/documents/20182/51490/250422_Opinion_response.pdf.

⁽¹⁷⁾ Available at https://www.acer.europa.eu/sites/default/files/documents/Individual%20Decisions/ACER%20Decision%2036-2020%20on%20cross-border%20participation_XBP%20CM_0.pdf.

3.3.1. Impact on greenhouse gas emissions

- (57) Poland compares the two scenarios presented in the NRAA (see recital (48) above) to assess the impact on greenhouse gas emissions of introducing a derogation in the form of supplementary auctions.
- (58) Poland explains that the main difference between the two scenarios is that the volume of unserved energy is significantly higher in the baseline scenario than in the scenario with capacity mechanism. Table 7 below compares the unserved energy values in the two NRAA scenarios.

Table 7

Unserved energy values in the two NRAA scenarios

Year		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Base scenario	GWh/a	5.8	40.6	54.4	52.1	31.8	13.8	9.4	22.7	24.3	23.6	18.1	23.5	25.3	23.3	13.5	33.6
Scenario with CM	GWh/a	1.8	2.1	3.2	2.4	3.6	2.2	2.9	3.8	2.1	4.3	3.8	6.4	10.2	5.1	8.7	4.0

Source: PSE data compiled for the preparation of the NRAA.

- (59) Poland estimates that in the short term, the implementation of the derogation may lead to a slight increase in CO₂ emissions (by 0,2 – 0,3 % of energy sector emissions) over the period covered by the derogation (2025 to 2028). Poland explains that this is because in the scenario with capacity mechanism, the reliability standard is achieved, resulting in less unserved energy than in the baseline scenario, as emission-intensive units would be eligible to participate in supplementary auctions to meet the reliability standard. Poland submits that during this period, due to their lead time, it is not possible to commission large quantities of new thermal units with lower emissions, such as OCGT/CCGTs, which would reduce those additional emissions.
- (60) Table 8 presents a comparison of CO₂ emissions based on data from the electricity and heat generation sector in CHP emissions under the two scenarios in the NRAA.

Table 8

Year			2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
A	Baseline scenario	M _t	99,3	92,6	84,2	75,9	68,7	62,2	51,7	47,3	44,3	41,4	38,9	34,8	34,1	32,3	31,9	30,4
B	Scenario with capacity mechanism	M _t	99,5	92,9	84,8	76,1	68,7	62,4	51,7	47,5	43,5	40,3	38,3	34,3	33,4	31,7	31,3	29,9
C= B-A	Difference	M _t	0,2	0,3	0,5	0,1	0,0	0,2	0,0	0,1	-0,9	-1,1	-0,6	-0,5	-0,7	-0,7	-0,7	-0,5

Source: PSE data compiled for the preparation of the NRAA.

- (61) Poland concludes that the derogation would have a very limited impact on emissions in the electricity generation sector in centrally dispatched generation units, as the volume of units covered by the derogation that are potentially eligible for capacity contracts through supplementary auctions would be limited to the minimum necessary. On the other hand, as outlined in detail in Section 3.3.2 below, Poland argues that the derogation would create more stable market conditions for investment decisions on demand response, storage and RES, thus facilitating faster emission reduction in later years (and in the medium term). For this reason, Poland also argues that in the baseline scenario emissions levels are higher in years from 2033 to 2040, due to less favourable market conditions for new investments.

3.3.2. Impact on energy transition

- (62) Poland uses the two scenarios presented in the NRAA (see recital (48) above) also as a basis for assessing the impact of the derogation on the energy transition objectives, i.e. on the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response.
- (63) This comparative analysis shows that the derogation may temporarily maintain a slightly higher volume of higher-emission generation units. However, according to Poland, in the medium term – in the 2030s – the phase-out of high-emission units would accelerate in the scenario with capacity mechanism compared with the baseline scenario.
- (64) According to Poland, the implementation of the derogation would minimise the risk of the reliability standard not being met and would reduce price volatility. This would create more stable and predictable market conditions, which would foster investments in flexible capacity, such as storage and new dispatchable units, renewable capacity and electromobility, ultimately leading to coal units no longer being necessary to maintain the reliability standard. Poland also claims that, in the absence of the derogation, existing dispatchable and flexible units (i.e. demand response and energy storage units) would be required to operate very often and might not be able to meet their obligations under the existing capacity mechanisms' rules in highly inadequate system, with the risk of facing penalties. This would disincentivise investments in clean flexible technologies and their participation in the capacity market.
- (65) Figure 1 and Table 9 below show which technologies will be deployed by the units selected under the existing capacity mechanism through primary auctions for a delivery period up to 2029.

Figure 1

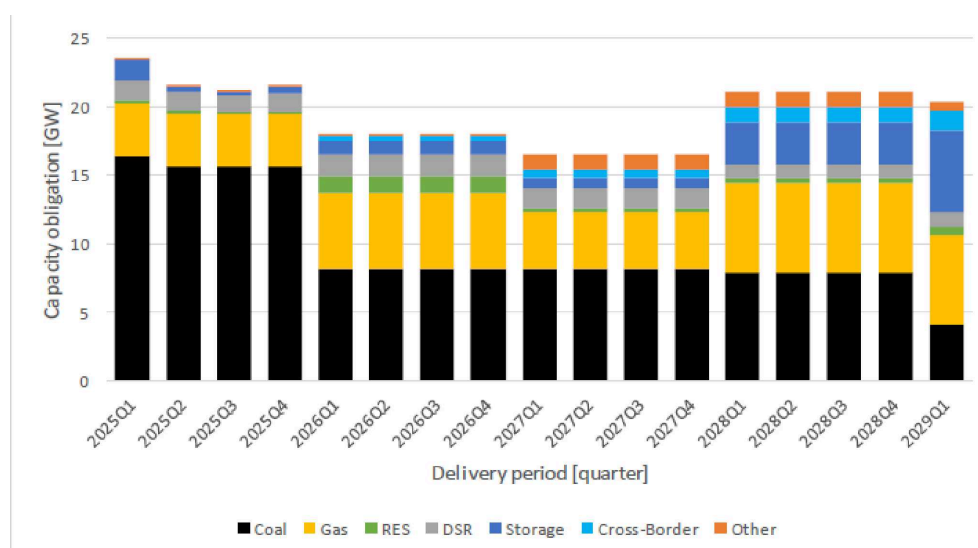


Table 9

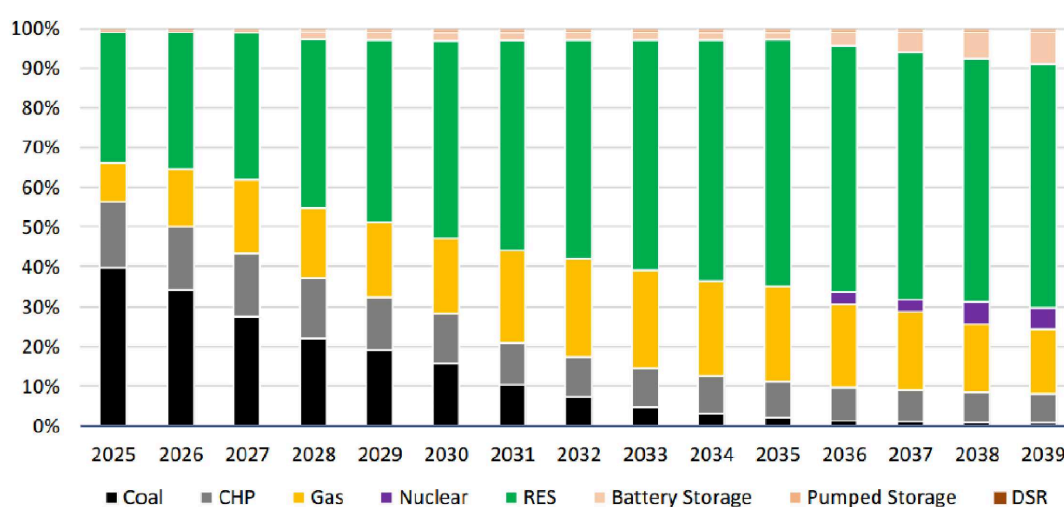
	Coal	Gas	RES	DSR	Storage	Cross-Border	Other
2025Q1	16,37	3,91	0,18	1,45	1,53	0,00	0,05
2025Q2	15,70	3,83	0,18	1,36	0,36	0,00	0,05
2025Q3	15,65	3,82	0,16	1,18	0,28	0,00	0,05
2025Q4	15,65	3,83	0,18	1,32	0,43	0,00	0,05
2026Q1	8,19	5,50	1,26	1,51	1,11	0,35	0,05
2026Q2	8,19	5,50	1,26	1,51	1,11	0,35	0,05
2026Q3	8,19	5,50	1,26	1,51	1,11	0,35	0,05
2026Q4	8,19	5,50	1,26	1,51	1,11	0,35	0,05
2027Q1	8,07	4,27	0,21	1,54	0,74	0,55	1,19
2027Q2	8,07	4,27	0,21	1,54	0,74	0,55	1,19
2027Q3	8,07	4,27	0,21	1,54	0,74	0,55	1,19
2027Q4	8,07	4,27	0,21	1,54	0,74	0,55	1,19
2028Q1	7,88	6,48	0,42	0,98	3,12	1,08	1,18
2028Q2	7,88	6,48	0,42	0,98	3,12	1,08	1,18
2028Q3	7,88	6,48	0,42	0,98	3,12	1,08	1,18
2028Q4	7,88	6,48	0,42	0,98	3,12	1,08	1,18
2029Q1	4,05	6,60	0,57	1,11	5,87	1,58	0,58

Source: Ministry of Climate and Environment, Poland.

- (66) The NRAA includes assumptions for 2025-2040 regarding the development of RES, energy storage solutions, dispatchable energy sources using low or zero emissions fuels, demand response facilities, electromobility and other sectors. Their projected deployment increases considerably over time in the scenario with capacity mechanism as shown in Figure 2 below, while the share of coal decreases significantly after the expiry of the derogation (from 40 % in 2025 to 20 % in 2029). In the following years, the share of coal-fired generation in the market further decreases. This is also due to the expiry of long-term contracts awarded to coal-fired installations under the capacity mechanism before 31 December 2019 (see recital (7) above).

Figure 2

Share of technologies in electricity generation in the capacity mechanism scenario ⁽¹⁸⁾



Source: PSE data compiled for the preparation of the NRAA.

⁽¹⁸⁾ The coal capacities in the electricity generation mix after the expiry of the derogation are existing capacities that have been contracted through multi-annual agreements before 31 December 2019 under the existing capacity mechanism.

3.3.3. *Assessment of investment barriers*

- (67) In May and June 2024, the Polish Ministry of Climate and Environment conducted a survey among electricity market participants ⁽¹⁹⁾ to gauge their opinions on the degree of development of the electricity market and the functioning of the capacity market.
- (68) On the basis of the results of the survey, the Ministry identified, among other things, the following barriers and areas for consideration for regulatory change:
- changes towards greater flexibility in the electricity system, including the promotion of flexibility services, dynamic price contracts and balancing system services and better integration of RES,
 - in the context of the operation of the wholesale market, a lack of measures to ensure an appropriate margin in the price of electricity and to protect final customers against high energy prices.
- (69) According to participants, the administrative approval process for investments in grid infrastructure is lengthy and complex. The lack of public acceptance creates undue obstacles to infrastructure investments. External capital, including debt financing, is required to enable investors to decide to start investments as the costs of projects in the energy sector are still increasing.
- (70) In 2024, the Polish NRA conducted a survey to collect opinions from energy market participants and gather proposals for potential changes to Poland's existing capacity mechanism. The results of the survey identified several factors that may have affected the results of the capacity market auctions for delivery periods starting after 1 July 2025. These are:
- limited ability to secure financing from financial markets for the modernisation of existing generating units and the development of new generating units using fossil fuel,
 - the significant impact of global developments, such as the COVID-19 pandemic and geopolitical conditions (disruptions to the supply of semi-finished products, materials and raw materials from regions affected by warfare or terrorist threats) and macroeconomic challenges (a gradually deepening crisis and sharp increases in inflation), which negatively affected the cost of raising capital,
 - the complex and lengthy administrative procedures related to obtaining location and environmental decisions and building permits.
- (71) In Poland's view, the current market rules and the framework governing the functioning of the existing capacity mechanism do not hinder the development of storage and demand response in the existing capacity mechanism. The primary factor influencing the development of these capacities is, in Poland's view, the economic viability of their units. Current and forecasted revenues from the energy market and ancillary services appear insufficient to cover costs and guarantee a satisfactory profit margin.

3.3.4. *Plan to transition away from the participation of capacity emitting more than the emissions limit in capacity mechanisms*

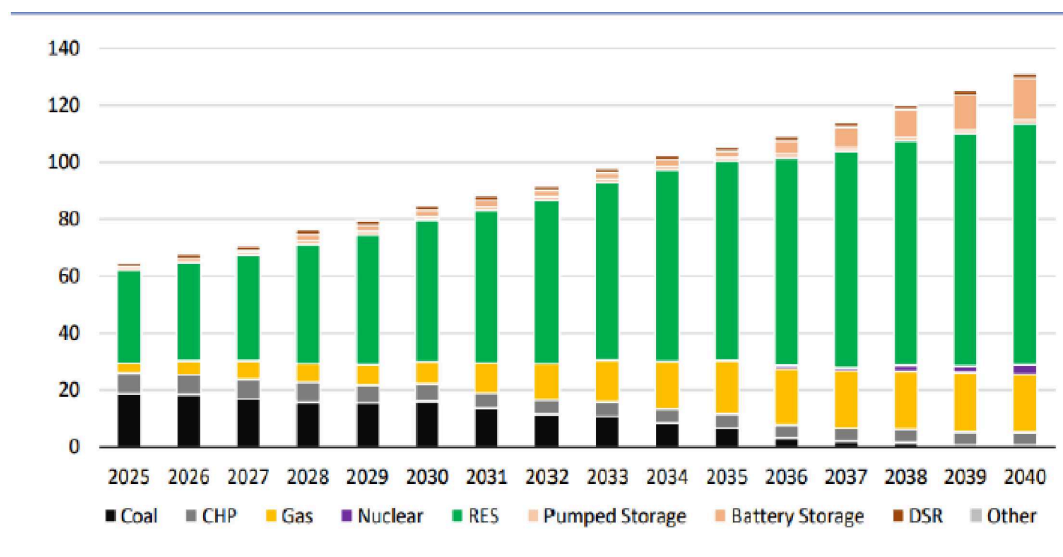
- (72) As required by Article 64(2d) of the Electricity Regulation, the application is accompanied by a plan with milestones to transition away from the participation of coal in the existing capacity mechanism by the date of the expiry of the requested derogation, including a plan to procure the necessary replacement capacity. In these documents Poland also puts forward measures to address the regulatory and investment barriers identified in recitals (67) to (71).

⁽¹⁹⁾ Poland notes that the survey was open to all market participants. More than 120 entities took part, representing electricity generators, suppliers, operators, aggregators, electricity consumers (including industrial), and others.

- (73) For the reasons illustrated in recitals (59) and (64) above, Poland submits that the derogation may temporarily result in a slightly slower transition away from coal units in the capacity market in the short term, but would create more favourable conditions for investments in replacement capacity in the medium term. Moreover, if the requested derogation is granted, coal-fired generating units will no longer be able to compete with low-emission units in the existing capacity mechanism after 31 December 2028, when the requested derogation expires. Consequently, the potential volume of coal units that would be economically viable in the energy market is expected to be very limited, due to the lack of financial incentives, high operating and maintenance costs, low number of operating hours and corresponding low revenues, and the end of their technical lifetime ⁽²⁰⁾.
- (74) Poland does not expect major market-based investments between 2025 and 2028, apart from those investments receiving public support as mentioned in recitals (77) to (81), as new units cannot be commissioned in time to be operational within this period. This is mainly due to their lead times and the fact that they have not yet obtained connection agreements and environmental permits.
- (75) The NRAA provides estimates of the replacement capacity that would need to be installed in order to replace coal-based generation in the system ⁽²¹⁾, including the indicative national trajectory for the overall share of renewable energy. Figure 3 below provides an overview of Poland's plan with milestones to transition away from the participation of coal in the existing capacity mechanism by the date of the expiry of the requested derogation.

Figure 3

Installed capacity of technologies for electricity generation in the scenario with capacity mechanism. All values are in GW.



Source: NRAA.

- (76) In order to meet the milestones, Poland will apply the implementation plan (see recital (82)) and carry out additional regulatory reforms (see recitals (83) to (85)). Furthermore, Poland expects to procure the necessary replacement capacity through the existing capacity mechanism (see recitals (77) to (80)) and other support schemes (see recital (81)). Some of the milestones to procure the necessary replacement capacity have already been met: new dispatchable capacities will be operational by the time the derogation expires, as shown by the results of primary auctions for delivery periods from 2026 to 2029 (see recitals (77), (78) and (80)).

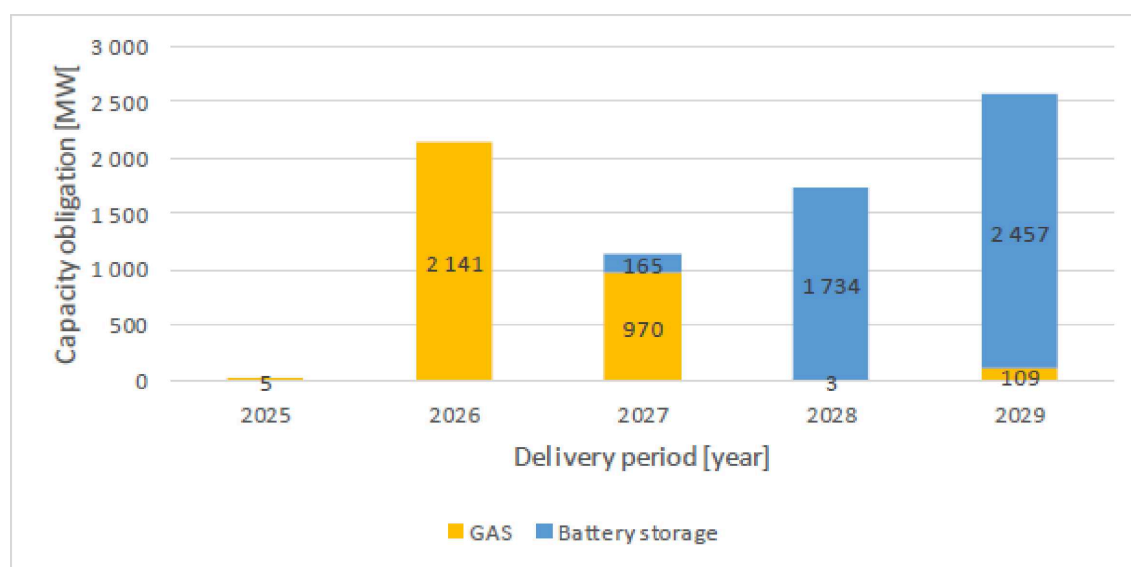
⁽²⁰⁾ In Figures 2 and 3 of this Decision, coal capacities appear to have a limited decline in the 2028-2030 period compared to previous years. This is because coal capacities in the electricity generation mix after the expiry of the derogation are existing capacities that have been contracted through multi-annual agreements before 31 December 2019 under the existing capacity mechanism.

⁽²¹⁾ The NRAA assumes that these capacities will be acquired through new, existing or planned support schemes and through market-based projects.

- (77) For 2026-2028, the NRAA shows an increase of around 3 GW in gas capacity and around 2 GW in new battery storage units. Under the primary auctions concluded for the delivery years 2026 and 2027 over 3,1 GW of new gas-fired units were procured. More than 1,7 GW of new battery storage capacity was procured for the delivery year 2028. The results of the main auction for the delivery year 2029, conducted after the NRAA was published, indicate that the total amount of storage capacity reached up to 6 GW in 2029, exceeding NRAA projections.
- (78) Figure 4 below displays the capacity obligations' volumes ⁽²²⁾ of new gas and storage capacity already procured under the existing capacity mechanism up to 2029.

Figure 4

New capacity obligations contracted through auctions already concluded



Source: Ministry of Climate and Environment, Poland.

- (79) RES installed capacity is expected to increase by nearly 10 GW by 2028 and by an additional 8 GW by 2030. Furthermore, between 2031 and 2040, over 12,5 GW of gas-fired units, 12,5 GW of battery storage, nearly 35 GW of RES and 3,3 GW of nuclear power plants are expected (in scenario with capacity mechanism). Poland indicates that the values provided in the NRAA are in line with the existing and planned schemes for RES and that the share of RES in the electricity component of the indicative national trajectory for the overall share of renewable energy will be met.
- (80) The NRAA also assumes the expansion of demand response. Explicit demand response capacity procured under the existing capacity mechanism will reach 1 600 MW by 2029 and remain stable at this level thereafter. In addition to explicit demand response, implicit demand response will gradually increase over the subsequent years of the assessment. This implicit demand response includes flexibility from hydrogen production, power-to-heat systems and electric vehicles. By 2030, implicit demand response will enable the shifting of approximately 500 MW, rising to around 3 000 MW by 2033 and continuing to grow thereafter. Combined, these mechanisms will allow up to 20 % of domestic demand to be shifted from peak hours to periods of lower prices.
- (81) In addition to the measures described in recital (76) above, Poland plans to continue to support the deployment of low-emission installations. The main support schemes are the following:
- a scheme for the construction and operation of a new nuclear power plant of up to 3 750 MW, which is scheduled to start operating in the second half of 2030s ⁽²³⁾,

⁽²²⁾ Capacity obligation is lower than the installed capacity of units, which are the units expected to appear on the market each year.

⁽²³⁾ State Aid SA.109707 (2024/C) (ex 2024/N) – Poland Aid measures for the first nuclear power plant in Poland.

- a scheme to support the deployment of 5 100 MW total installed capacity of new high-efficiency cogeneration units by 2028, which will allow coal-based district heating boilers to be replaced with cogeneration units that mainly use natural gas ⁽²⁴⁾,
 - renewable schemes to support, among other things, the installation of 3 000 MW of onshore wind capacity, 9 000 MW of solar energy (PV), 180 MW of hydroenergy, 300 MW of agricultural biogas, 660 MW of biomass and biogas installations (between 2022 and 2027) ⁽²⁵⁾, and up to 10,9 GW of offshore wind (between 2025 and 2028) ⁽²⁶⁾,
 - about 3 100 GW of biomethane per year, which will entail the construction of about 50 installations for a plant of an average size of 2,8 MW of energy converted to electricity equivalent ⁽²⁷⁾.
- (82) As regards regulatory measures, Poland will continue to implement its implementation plan, which contains electricity market reforms in five areas: the balancing market, demand response, the retail market, grid expansion and cross-border interconnections, and allocation constraints. Since the adoption of the implementation plan, Poland has been implementing the market reforms on an ongoing basis and has published the progress on their implementation in four monitoring reports. For instance, some investment projects are in progress (e.g. the second track of the Mikułowa-Świebodzice line (400kV)), and the deployment of smart meters is underway to achieve the target set out in the plan of reaching 80 % of end users by 2028.
- (83) In addition to the reforms reported under the implementation plan, the Polish authorities propose regulatory reforms in the RES sector and changes to the regulatory framework for electricity grid connections in order to address the regulatory and investment barriers identified in Section 3.3.3.
- (84) As regards the RES sector, the main measures planned aim to increase the attractiveness of net billing for prosumers; speed up the permitting process; abolish the 10H rule (which states that the minimum distance of a wind power plant from residential buildings must be ten times the height of a wind turbine); promote the connection of micro-installations with electricity storage to the distribution grid; and accelerate and streamline the implementation of offshore wind farm investments. Poland expects to implement these measures in 2025.
- (85) As regards electricity grid connections, Poland plans to improve the planning for the development of transmission and distribution networks and increase the number of facilities that can be connected, through the introduction of streamlined procedures. This includes setting up centralised online platforms with regularly updated information on submitted requests and the status of their treatment or on available capacities for connection and incorporating an obligation to meet milestones into connection agreements. Poland expects to implement these measures in 2025.
- (86) Moreover, as shown also in the plan with milestones (see Figure 3 in recital (75)), following the expiry of the derogation, Poland will continue to ensure that coal-based generation capacity is gradually replaced by lower-emitting capacity. This capacity will be procured, or is in the process of being procured, through the existing capacity mechanism and other support schemes and will be integrated into the system on market terms. At the same time, Poland will continue to implement the reforms detailed in its implementation plan ⁽²⁸⁾ and the other regulatory measures referred to in recital (83) to create favourable market conditions for both public and private investments.

⁽²⁴⁾ State Aid SA.51192 (2019/N) – Poland – CHP support and State aid; SA.52530 (2019/N) – Poland – Reductions from CHP charges for Energy Intensive Users.

⁽²⁵⁾ State Aid SA.64713 (2021/N) – Poland – Prolongation of the support scheme for RES.

⁽²⁶⁾ State Aid SA.55940 (2021/N) – Poland Offshore Wind scheme.

⁽²⁷⁾ The proposed solutions will be subject to State aid approval by the Commission.

⁽²⁸⁾ Available at <https://circabc.europa.eu/ui/group/8f5f9424-a7ef-4dbf-b914-1af1d12ff5d2/library/6184db18-c5ad-4c82-a2d3-1d2564e1a7a7/details>.

4. COMMENTS RECEIVED DURING THE PUBLIC CONSULTATION

- (87) As stated in recital (3), the Commission held a public consultation on the application from 14 February 2025 to 17 March 2025. One comment was submitted.
- (88) The respondent notes that foreign resource participation in auctions under the existing capacity mechanism is determined by the NRAA. Citing the ACER opinion referred to in Section 3.2.3 of this Decision, the respondent claims that the NRAA underestimates the contribution of foreign resources required to meet Polish demand. This leads to limited volumes of foreign capacity being allowed to participate in the auctions.
- (89) In particular, the respondent claims that Poland applies a formula to determine the volume of the supplementary auctions (see recital (35) above) that could result in preventing the participation of foreign resources in the auctions.
- (90) In reply to these allegations, Poland observes that units located in the synchronous profile zone have been eligible to participate in the main auction for the delivery year 2027 and beyond and in the additional auctions for the delivery year 2025 and beyond. Foreign units are eligible for one-year contracts.
- (91) With regard to the supplementary auctions, Poland confirms that the amount of foreign capacity that can participate is determined in line with the parameters specified in recitals (10) and (35) above.
- (92) Poland clarifies that these parameters reflect the purpose of the supplementary auctions, namely to procure the missing capacity, rather than contracting the same capacity that was already secured in previous auctions for the same delivery period for the second time. Otherwise, the maximum entry capacity value would be exceeded, and the volume offered for cross-border participation would be greater than that which can contribute to the adequacy of the Polish electricity system.
- (93) Finally, Poland notes that, for the supplementary auction held for the second half of 2025, the entire capacity was available for foreign participation, i.e. 1 169 MW for the synchronous profile, 365 MW for Lithuania and 593 MW for Sweden.

5. ASSESSMENT OF THE REQUESTED DEROGATION

5.1. Legal basis

- (94) In accordance with Article 64 paragraphs (2b), (2c) and (2 d) of the Electricity Regulation, a derogation from Article 22(4) point (b) of that Regulation may be granted if the conditions set out therein are met.

5.2. Article 64(2b) of the Electricity Regulation

- (95) In accordance with Article 64(2b) of the Electricity Regulation, 'Member States may request that generation capacity that started commercial production before 4 July 2019 and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity and more than 350 kg CO₂ of fossil fuel origin on average per year per installed kW_e may, subject to compliance with Articles 107 and 108 TFEU, exceptionally be committed or receive payments or commitments for future payments after 1 July 2025 under a capacity mechanism approved by the Commission before 4 July 2019'.
- (96) The requested derogation would apply to existing plants that exceed the emission limit. Such plants would exceptionally be committed or receive payments or commitments for future payments after 1 July 2025 (see recital (27)), under the existing capacity mechanism, which was approved by the Commission under State aid rules in February 2018 (see recital (5)).
- (97) This Decision is without prejudice to the assessment of compliance with Articles 107 and 108 TFEU.
- (98) In view of the above, the requirements under Article 64(2b) of the Electricity Regulation are fulfilled.

5.3. Article 64(2c) of the Electricity Regulation

- (99) According to Article 64(2c) of the Electricity Regulation, ‘the Commission shall assess the impact of the request referred to in paragraph 2b in terms of greenhouse gas emissions. The Commission may grant the derogation after assessing the report referred to in paragraph 2d, provided that the following conditions are fulfilled:
- (a) the Member State has carried out, on or after 4 July 2019, a competitive bidding process pursuant to Article 22 and for a delivery period after 1 July 2025, which aims to maximise the participation of capacity providers which meet the requirements in Article 22(4);
 - (b) the amount of capacity offered in the competitive bidding process referred to in point (a) of this paragraph is not sufficient to address the adequacy concern as identified pursuant to Article 20(1) for the delivery period covered by that bidding process;
 - (c) the generation capacity that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity is committed or receives payments or commitments for future payments for a period not exceeding one year, and for a delivery period which does not exceed the duration of the derogation, and is procured through an additional procurement process which complies with all requirements of Article 22 except for those laid down in paragraph 4, point (b) of that Article and only for the amount of capacity that is needed to solve the adequacy concern referred to in point (b) of this paragraph.

The derogation pursuant to this paragraph may be applied until 31 December 2028, provided that the conditions set out therein are complied with for the entire duration of the derogation.’

5.3.1. Article 64(2c) point (a): Primary auction processes (main and additional auctions)

- (100) Poland has carried out primary auctions after 31 December 2019 for a delivery period after 1 July 2025 (see recitals (22) and (26)).

Maximised participation of capacity providers which meet the emission limits in primary auctions

- (101) These primary auctions were open to the participation of existing and new generators, demand response and storage operators located in Poland and in the neighbouring Member States (see recital (10)) and, after 31 December 2019, prevented the participation of existing plants that did not meet the emission limit (see recital (8)).
- (102) Capacity units that met the emission limit did not compete against units not meeting the emission limit in the primary auction processes. Moreover, capacity units that met the emission limit could secure longer-term contracts compared to the units participating in additional or supplementary auctions, where the maximum duration is one year.
- (103) The green bonus referred to in recital (17) creates an additional incentive for low-carbon capacity to participate in primary auctions. In tie-break situations, capacity providers with lower emission factors clear ahead of those with higher emission factors, and capacity that emits less than 450 gCO₂/MWh can secure even longer contracts than those awarded to other capacity providers.
- (104) The primary auctions that have already taken place for the delivery years 2025 to 2029 have resulted in a tangible increase in contracted capacity that meets the emission limit (e.g. battery storage and gas-fired units) (see recital (78)).
- (105) Finally, capacity units meeting the emission limit will also be eligible to participate in supplementary auctions (see recital (32) above). These auctions will only be conducted if the primary auctions have not succeeded in procuring the amount of capacity necessary to address the adequacy concern (see recital (27)).

- (106) In light of the above, it can be concluded that Poland has carried out, after 31 December 2019, several competitive bidding processes for a delivery period after 1 July 2025 which aim to maximise the participation of capacity providers which meet the requirements of Article 22(4) of the Electricity Regulation.

Compliance of primary auctions with Article 22 of the Electricity Regulation

- (107) The Commission approved the design of the Polish capacity mechanism in its State aid decision of 7 February 2018. Recitals (108) to (120) below assess whether the primary auction complies with Article 22 of the Electricity Regulation.
- (108) Article 22(1) of the Electricity Regulation establishes specific design features that any capacity mechanism must meet⁽²⁹⁾, while Article 22(3) lays down specific requirements for capacity mechanisms other than strategic reserves, such as the existing capacity mechanism.
- (109) Article 22(1), points (g) and (h) respectively of the Electricity Regulation, provide that the technical conditions for the participation of capacity providers must be set out in advance of the selection process and that the capacity mechanism must be open to participation of all resources that are capable of providing the required technical performance, including energy storage and demand-side management. The pre-qualification requirements for competitive bidding processes carried out after 31 December 2019 were set out in advance of the selection process (see recital (11)), and the processes were open to the participation of existing and new generators, demand response and storage operators located in Poland and to foreign capacity (see recital (10)). Moreover, the eligibility rules (see recital (10)), lead times (see recital (12)) and contract lengths (see recitals (15), (16) and (18)) take into account the specificities of potential capacity providers to ensure a level playing field between different technologies and between new and existing capacities.
- (110) Article 22(1) points (d) and (f) respectively of the Electricity Regulation provide that capacity providers must be selected by means of a transparent, non-discriminatory and competitive process and that their remuneration must be determined through the competitive process. Under the existing capacity mechanism, capacity providers are selected through auctions. The parameters of the auctions are publicly available and determined well in advance of the auctions (see recitals (11) and (13)). The eligibility criteria and other design features referred to in recitals (11) and (13) ensure that the auctions are non-discriminatory and competitive. The auction is a descending-clock, pay-as-clear auction, which closes when the lowest price at which demand meets supply has been identified (see recital (13)).
- (111) Article 22(1)(b) of the Electricity Regulation states that capacity mechanisms must not create undue market distortions and not limit cross-zonal trade. The existing capacity mechanism remunerates only availability and not the actual electricity produced (see recital (9)), and the competitive allocation process ensures that revenues generated by the capacity market are limited to the minimum necessary and allow the wholesale market to send appropriate price and investment signals. Moreover, the competitive bidding process is open and non-discriminatory (see recitals (11) and (13)).
- (112) According to Article 22(1) points (e) and (i) respectively of the Electricity Regulation, capacity mechanisms must provide incentives for capacity providers to be available in times of expected system stress and apply appropriate penalties to capacity providers that are not available in times of system stress.
- (113) Under the existing capacity mechanism, payments are provided for capacity providers to be available in times of expected system stress, and penalties apply in cases of unavailability (see recitals (9) and (20)).

⁽²⁹⁾ According to that Article, a capacity mechanism must: (b) not create undue market distortions and not limit cross-zonal trade; (c) not go beyond what is necessary to address the adequacy concerns; (d) select capacity providers by means of a transparent, non-discriminatory and competitive process; (e) provide incentives for capacity providers to be available in times of expected system stress; (f) ensure that the remuneration is determined through the competitive process; (g) set out the technical conditions for the participation of capacity providers in advance of the selection process; (h) be open to participation by all resources that are capable of providing the required technical performance, including energy storage and demand-side management; and (i) apply appropriate penalties to capacity providers that are not available in times of system stress.

- (114) Article 22(1), point (c) of the Electricity Regulation provides that a capacity mechanism must not go beyond what is necessary to address the adequacy concern. The methodology described in recital (14) above ensures that this requirement is met because: (a) the adequacy concern is determined on the basis of consumers' willingness to pay for capacity (with the amount of capacity to be auctioned being determined by the reliability standard); and (b) the amount of capacity needed to meet the adequacy concern is set taking into account the likely availability of capacity, on the basis of a proposal from the TSO and with the involvement of the NRA.
- (115) On compliance with Article 22(3) of the Electricity Regulation, the Commission notes that the competitive nature of the allocation process (see recitals (10), (11) and (13)) and the design of the auction curve (see recital (14)) ensure that the auction clearing price tends to zero if enough capacity is present on the market, in line with the requirements in point (a). In addition, the existing mechanism includes a secondary market to ensure that capacity obligations are transferable between eligible capacity providers, in line with point (c). The requirement in point (b), namely that the capacity mechanism must remunerate the participating resources only for their availability and ensure that the remuneration does not affect decisions of the capacity provider on whether or not to generate, is fulfilled for the reasons set out in recital (113) above.
- (116) For the reasons set out in the above recitals, the primary auctions are in line with Article 22, paragraphs (1) and (3) of the Electricity Regulation.
- (117) Article 22(4) of the Electricity Regulation sets out the requirements on the emission limit and the carbon budget limit. Poland has introduced an emission limit and prevented the participation of existing plants emitting more than the emission limit to auctions carried out after 31 December 2019 (see recital (8)). Therefore, the primary auctions held after 31 December 2019 and for delivery years after 2025 comply with Article 22(4) of the Electricity Regulation.
- (118) Article 22(5) of the Electricity Regulation provides that compliance with Chapter IV of the Electricity Regulation is without prejudice to commitments or contracts concluded by 31 December 2019.
- (119) The Commission observes that the multiannual capacity agreements (see recital (16)) concluded before 31 December 2019 that commit to future payments, including those for generation that does not meet the emission limit, have been safeguarded in compliance with Article 22(5) of the Electricity Regulation.
- (120) In view of the above considerations, the conditions in Article 64(2c)(a) are considered fulfilled.

5.3.2. *Article 64(2c) point (b): Primary auction processes – amount of capacity insufficient to address the adequacy concern*

- (121) Article 64(2c), point (b) of the Electricity Regulation makes the granting of the derogation conditional on the amount of capacity offered in the competitive bidding process referred to in point (a) of the same paragraph being insufficient to address the adequacy concern for the delivery period covered by that bidding process. The adequacy concern should be identified in accordance with Article 20(1) of the Electricity Regulation.

5.3.2.1. *Adequacy concern identified by the NRAA*

- (122) According to Article 20(1) of the Electricity Regulation, Member States must monitor resource adequacy within their territory on the basis of the ERAA referred to in Article 23 of the Electricity Regulation. To complement the ERAA, Member States may also carry out an NRAA in accordance with Article 24 of the Electricity Regulation. Article 24(1) of the Electricity Regulation requires NRAAs to be regional in scope and based on the methodology referred to in Article 23(3) and in particular in points (b) to (m) of Article 23(5) of the Electricity Regulation.

- (123) An NRAA must be based on appropriate central reference scenarios, in accordance with Article 24(1) of the Electricity Regulation. According to Article 24(1)(a) of that Regulation, Member States may include sensitivities in their adequacy assessment that are linked to the particularities of national electricity demand and supply. As mentioned in Article 3(6) of the ERAA methodology, these sensitivities can cover a wide range of changes in assumptions across the entire geographical area under consideration, including different assumptions on input data such as installed capacities, variations in cross-zonal capacities, and different assessments of the robustness of the investments identified in the EVA.
- (124) According to Article 24(3) of the Electricity Regulation, where the NRAA identifies an adequacy concern that was not identified in the ERAA, the NRAA must include the reasons for the divergence between the two assessments, including details of the sensitivities used and the underlying assumptions. The NRAA must be published and submitted to ACER for an opinion. ACER's opinion must assess whether the divergences between the two assessments are justified.
- (125) The NRAA constitutes the most recent adequacy assessment carried out by the Polish TSO. It is on the basis of the NRAA that Poland has identified the adequacy concern mentioned in recital (27) and justifies the need for the requested derogation. While the NRAA covers the years 2025 to 2040, the assessment in this Decision focuses on the period relevant to the requested derogation, 2025-2028.
- (126) Whereas ERAA 2023 found no adequacy concerns for the years covered by the requested derogation, ERAA 2024 has identified an adequacy concern for 2026 and 2028. While ERAA 2024 is in the process of being approved or amended by ACER, the data on which it draws is based on the most up-to-date system developments and the latest available information and supports the conclusion of the NRAA that an adequacy concern exists for the period covered by the requested derogation.
- (127) However, the Commission notes that there are differences in the magnitude of the adequacy concern. ACER has provided an opinion on the NRAA, as described in Section 3.2.3 above. In its opinion, ACER compares the NRAA with ERAA 2023, given that it has not yet approved ERAA 2024. However, ACER does not quantify the impact of the divergences, either in terms of LOLE or EENS, or in terms of the amount of capacity necessary to ensure generation adequacy.
- (128) With regard to the differences between the NRAA and ERAA 2023 in the assumptions on capacity resources, ACER found these to be justified (see recital (52)).

Differences regarding assumptions on capacity resources

- (129) According to Article 23(5)(d) of the Electricity Regulation, the ERAA and the NRAAs must appropriately take into account the contribution of all existing and possible future resources. Furthermore, under Article 5(10) of the ERAA methodology, the economic data used for the ERAA and NRAAs should be consistent with the latest best estimate available used in the most recent CONE study, as set out in the methodology for calculating adequacy metrics.
- (130) The Commission agrees with ACER's assessment of the assumptions on capacity resources and considers the changes made to the NRAA to be reasonable updates based either on the latest national CONE study or on the latest available information ⁽³⁰⁾.

Difference regarding the modelling of capacity resources

- (131) As regards the differences between the NRAA and ERAA 2023 concerning the modelling of capacity resources, ACER could not conclude whether they are justified (see recital (52)). However, ACER notes that the combination of changes applied in the NRAA leads to more capacities exiting the system and a potential increase in the adequacy risks.

⁽³⁰⁾ National-specific cost assumptions were used for the fixed operating costs of existing coal power plants and for assumptions on demand-side response and storage capacity and nuclear, wind and solar power. The latest CONE study was used to estimate the costs of potential new entry technologies.

- (132) According to Article 23(5)(b) of the Electricity Regulation, resource adequacy assessments should include an economic assessment of the likelihood of retirement, mothballing and new-build of generation assets.
- (133) The Commission notes that the modelling of the EVA of resources in the NRAA is different from that used in the ERAA. Some of the assumptions that lead to these divergences are not sufficiently substantiated in the NRAA or in the report referred to in Section 3.2.4. In particular, with regard to the EVA, the Commission observes that in the NRAA, economic decisions are simulated on the basis of one isolated calendar year, and future revenues are not considered. By contrast, according to standard economic practice, economic decisions of generators and investors are typically based on the forecasted costs and revenues over a longer period.
- (134) The Commission notes that the NRAA assumes a larger share of plants are in maintenance in January, a month where scarcity events occur most frequently. This reduces the availability of resources, thereby affecting the adequacy risk.
- (135) Simulating economic decisions on the basis of costs and revenues for a single year is not in line with standard economic practice, as it could lead to the premature exit of some power plants from the market even though they may be profitable over the economic lifetime of the asset. Moreover, Poland has not submitted sufficient evidence as regards the maintenance schedules of power plants. Therefore, to align these elements in the NRAA with the Electricity Regulation and the ERAA methodology, the NRAA should estimate the likelihood of retirement, mothballing and new-build of generation assets on the basis of estimated revenues and costs over a ten-year period, rather than for a single year. Furthermore, Poland should justify the assumptions on maintenance patterns on the basis of actual maintenance schedules and explain how these patterns relate to the estimates in the NRAA, in order to demonstrate that they constitute a national specificity of the Polish generator fleet.
- (136) The NRAA assumes that, without the capacity mechanism, demand response, storage and gas-fired power plants would not enter the market between 2025 and 2028.
- (137) For demand response these assumptions are in line with ERAA 2023. However, ERAA 2023 estimates that batteries and gas-fired plants would enter the market in 2025-2028 and 2028 respectively. As acknowledged also in the ACER opinion, the assumption in the NRAA on the market entry of new gas-fired power plants is a reasonable update, as the Polish NRAA was finalised later than ERAA 2023. Moreover, the commissioning of gas-fired power plants on a market basis in the years covered by the requested derogation (2025-2028) is very unlikely given their lead time and the length of the procedures required to obtain building permits and grid connection approvals. These considerations also apply to the new entry of storage installations during the period covered by the requested derogation.

Differences regarding assumptions on cross-zonal exchanges

- (138) As regards the differences between the Polish NRAA and ERAA 2023 concerning the assumptions on cross-zonal exchanges, ACER considers that these are not justified (see recital (52)).
- (139) Article 23(5)(d) of the Electricity Regulation provides that the ERAA methodology, which NRAAs must also follow, must appropriately take account of the contribution of all resources, including imports and exports and their contribution to flexible system operation.
- (140) While ERAA 2023 takes a regional approach and explicitly models multiple bidding zones, the Polish NRAA does not explicitly model foreign bidding zones. As a result, it provides limited visibility of demand and supply in neighbouring countries. Moreover, the NRAA considers imports' contributions to adequacy in a simplified manner and does not consider exports at all. These assumptions on imports and exports may result in higher adequacy concerns being identified in the NRAA than those identified in the ERAA.
- (141) With regard to imports, the NRAA uses a simplified average of winter values – a period during which scarcity is likely to occur simultaneously across the region and exports to Poland are reduced – and applies it throughout the year, even though imports are typically higher during the summer.

- (142) According to Poland, the divergence in import assumptions is justified by the application of an approach that in its view is consistent with the cross-border participation methodology (Article 26(11)(a) of the Electricity Regulation) (see recital (55)). However, this methodology should only be used to determine how much foreign capacity can participate in the capacity mechanism after the adequacy assessment has been conducted.
- (143) That said, the distribution of estimated hours of energy not served during the year is relevant for dimensioning capacity auctions. Poland could consider this distribution, taking into account situations of simultaneous scarcity, when determining the amounts to be procured through capacity auctions.
- (144) As regards the export assumptions, the NRAA estimates exports at zero MW for the years covered by the derogation. This assumption influences the revenues generated by exports and thus, might impact decommissioning decisions. The NRAA's export assumptions are not adequately substantiated on the basis of evidence or modelling results, either in the NRAA or in the report referred to in Section 3.2.4. Therefore, the amount of electricity to be exported by Poland in future should be estimated on the basis of a modelling exercise and using reasonable assumptions, such as the dataset available in ERAA.
- (145) In view of the above analysis, the Commission concludes that, to ensure compliance with Article 20(1) of the Electricity Regulation, the amount of capacity necessary to meet the reliability standard needs to be recalculated on the basis of an updated NRAA. In particular, the NRAA must:
- (a) estimate the amount of electricity to be exported by Poland in future on the basis of the result of a modelling exercise and using reasonable assumptions; and
 - (b) estimate the likelihood of retirement, mothballing and new-build of generation assets on the basis of estimated revenues and costs over a period of 10 years rather than a single year; and
 - (c) justify the assumptions on the maintenance patterns on the basis of actual maintenance schedules and explain how these patterns relate to the estimates in the NRAA in order to demonstrate that they constitute a national specificity of the Polish generator fleet.

5.3.2.2. Amount of capacity insufficient to address the adequacy concern

- (146) As stated in recital (27), supplementary auctions for a given delivery period would be carried out when the need for additional capacity is justified on the basis of the NRAA results and provided that the following conditions are met:
- the primary auctions (main and additional auctions) for the given delivery period have been concluded, and
 - the primary auctions (main and additional auctions) have failed to procure a volume of capacity sufficient to meet the reliability standard for a given delivery period, thereby failing to address the resource adequacy concern identified under Article 20(1) of the Electricity Regulation.
- (147) On the basis of the NRAA, Poland has indicated in Table 1 above the total capacity obligations required to meet the reliability standard in the years covered by the derogation (2025-2028). Poland has already contracted capacity through the main auctions for delivery years 2025 to 2028 and through the additional auctions for delivery years 2025 and 2026. The additional auctions for delivery years 2027 and 2028 have not yet taken place, as these auctions are held in the year preceding the delivery period (see recital (12)). As shown in Table 2, the capacity contracted in these auctions is not sufficient to satisfy the total required capacity obligations.
- (148) In view of the above, the Commission considers that the procedural requirement under Article 64(2c), point (b) of the Electricity Regulation is met, since Poland has confirmed that supplementary auctions will be held only after the primary auctions have been concluded and only if those auctions have failed to procure sufficient capacity to address the adequacy concern identified by the NRAA for the delivery period covered by those auction processes.
- (149) However, as indicated above, the NRAA should be updated as described in recital (145).

- (150) Furthermore, the Polish NRA must verify whether the total amount of capacity to be procured under the updated NRAA is justified and, in particular, whether it reflects the needs of the system in situations of simultaneous scarcity.

5.3.3. *Article 64(2c) point (c): Supplementary auctions*

- (151) As noted in recital (31), Poland has confirmed that the supplementary auctions are carried out in line with the same design conditions as those applied to the primary auctions, as described in Section 2 above, except for the following elements described in recital (31): (i) the eligibility criteria; (ii) auction frequency; (iii) formula to determine the amount of capacity to be procured; and (iv) contract duration.
- (152) As regards the design features of the supplementary auctions that do not diverge from those of the primary auctions, the Commission refers to the considerations set out in recitals (108) to (116) above, and considers that they comply with the relevant requirements of Article 22 of the Electricity Regulation, except for those laid down in paragraph 4, point (b) of that Article.

5.3.3.1. *Eligibility criteria*

- (153) Eligibility for supplementary auctions is broader than for primary auctions as they are open to existing plants that do not meet the emission limit set out in Article 22(4), point (b) of the Electricity Regulation. The Commission notes that this constitutes an element of the requested derogation and is in line with Article 64(2b) of the Electricity Regulation.
- (154) As regards cross-border participation in supplementary auctions, the Commission notes that foreign capacity providers are allowed to participate in supplementary auctions following the same procedure as in primary auctions, which is set out in recital (10). The amount offered in supplementary auctions is calculated by deducting the amount of capacity already allocated to foreign participants through primary auctions from the maximum entry capacity available for foreign capacity participation, which is calculated in line with the ACER methodology on cross-border participation.
- (155) As the maximum entry capacity available for foreign capacity participation provides an estimate of the extent to which foreign capacity can contribute to generation adequacy in situations of system stress, the same capacity must not be allocated twice for the same delivery period through the primary and supplementary auction processes.
- (156) The Commission therefore concludes that the formula applied to calculate the amount of capacity offered for cross-border participation in supplementary auctions is appropriate.

5.3.3.2. *Auction frequency*

- (157) As regards the differences in auction frequency between the primary and the supplementary auctions, the Commission refers to the reasoning set out in Section 5.3.2.2 and considers them appropriate, as the supplementary auctions will be held only after the primary auctions have concluded and only if those auctions have failed to procure sufficient capacity to address the adequacy concern identified by the NRAA for the delivery period covered by those auctions.

5.3.3.3. *Contract length and duration of the delivery period*

- (158) Article 64(2c), point (c) of the Electricity Regulation provides that capacity emitting more than the emission limit may be committed or receive payments or commitments for future payments for a period not exceeding one year and for a delivery period which does not exceed the duration of the derogation.
- (159) Generation units that do not meet the emission limit will be given the option to enter into contracts of no more than one year (see recital (28)). They will be able to enter into a contract of six months (second half of 2025) or one year (2026, 2027 or 2028) through the supplementary auctions.

- (160) The annual contracts may not exceed the duration of the requested derogation, which ends on 31 December 2028. Accordingly, capacity payments will be committed only up to the end of 2028 at the latest (see recital (37)).
- (161) Therefore, the contract length and the duration of the delivery period are in line with the requirements set out in Article 64(2c), point (c) of the Electricity Regulation.

5.3.3.4. Amount of capacity necessary to solve the adequacy concern

- (162) Article 64(2c), point (c) of the Electricity Regulation requires capacity to be procured through additional auction process only for the amount of capacity that is needed to solve the adequacy concern referred to in point (b) of the same paragraph.
- (163) Poland has confirmed that if the results of the NRAA demonstrate the need for supplementary auctions, those auctions will be limited to procuring the amount of capacity necessary to meet the reliability standard, in line with the formula set out in recital (35) above ⁽³¹⁾.
- (164) In view of the above, the Commission considers that the procedural requirement under Article 64(2c), point (c) of the Electricity Regulation is met, since the formula set out in recital (35) ensures that the supplementary auctions would contract only the amount of capacity that is needed to address the adequacy concern.
- (165) However, the NRAA should be updated as described in recital (145) and reviewed by the NRA as described in recital (150).

5.4. **Assessment of the report accompanying the request for derogation, including the impact of the requested derogation in terms of greenhouse gas emissions**

- (166) According to Article 64(2c), 'the Commission shall assess the impact of the request referred to in paragraph 2b in terms of greenhouse gas emissions. The Commission may grant the derogation after assessing the report referred to in paragraph 2d, Article 64(2d)'.
- (167) According to Article 64(2d) of the Electricity Regulation, the request for derogation must be accompanied by a report from the Member State which must include:
- (a) an assessment of the impact of the derogation in terms of greenhouse gas emissions, and on the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response;
 - (b) a plan with milestones to transition away from the participation of generation capacity referred to in paragraph 2b in capacity mechanisms by the date of the expiry of the derogation, including a plan to procure the necessary replacement capacity in line with the indicative national trajectory for the overall share of renewable energy and an assessment of the investment barriers causing the lack of sufficient bids in the competitive bidding procedure referred to in paragraph 2c, point (a).
- (168) Poland has submitted a report containing all the elements listed in Article 64(2d). Specifically, Poland has submitted:
- an assessment of the impact of the derogation on greenhouse gas emissions (see recitals (56) to (61)),
 - an assessment of the impact on energy transition (see recitals (62) to (66)),
 - an assessment of the investment barriers based on surveys carried out by the Ministry and the NRA (see recitals (67) to (71)), and
 - a plan to transition away from the participation of capacity not meeting the emission limit in the existing capacity mechanism (see recitals (72) to (85)).

⁽³¹⁾ See recital 36 above for the estimated ATC for the supplementary auctions for delivery years 2025 to 2028.

- (169) In the report, when assessing the impact of the derogation on greenhouse gas emissions, Poland compares the two scenarios presented in the NRAA: the scenario in which capacity not meeting the emission limit is covered by the requested derogation and the scenario in which the requested derogation is not applied.
- (170) The Commission notes that greenhouse gas emissions are higher in the scenario where the requested derogation is applied, as this scenario involves greater use of coal-fired generation in the system. However, the increase in greenhouse gas emissions is moderate (see recital (59)). Moreover, the derogation would apply only for a limited number of years (2025-2028) and would allow only the procurement of the amount of capacity necessary to address the adequacy concerns identified in the NRAA, which should be amended in line with recitals (145) and (150). Should the amended NRAA continue to indicate an adequacy concern that cannot be addressed through the primary auctions, Poland would be unable to meet its reliability standard without the derogation.
- (171) The Commission further notes that for the reasons set out in recitals (59), (74), and (81) above, it is unlikely that new dispatchable capacity will enter the market without public support during the period covered by the derogation. After the expiry of the derogation, capacities emitting more than the emission limit will no longer be eligible to participate in the capacity market.
- (172) Poland anticipates that only a limited number of these capacities will be profitable on the energy market, given the lack of financial incentives, the high maintenance and operating costs, and the low number of operating hours and corresponding low revenues. This is likely to result in the decommissioning of such plants after the expiry of the derogation (see recital (73) above). The Commission notes that the forecasted reduced share of coal-fired generation should provide incentives for private and public investments to replace coal-fired generation capacity. The derogation would thus ensure that such investments can be properly planned to facilitate an orderly transition towards a less carbon-intensive electricity system in the medium term, while mitigating risks to energy security.
- (173) Moreover, the Commission acknowledges that, for the period covered by the requested derogation, Poland has already procured or plans to procure, through the existing capacity mechanism and other support schemes, lower-emission capacity (see recitals (76) and (78)). The results of the primary auctions, particularly the most recent ones (see recital (78)) show that capacity that meets the emission limit has been successful in capacity auctions.
- (174) With regard to regulatory reforms fostering the investments needed to replace coal-fired generation, Poland will continue to apply the measures included in its implementation plan. In addition, the Commission notes that Poland has put forward additional regulatory measures with an implementation timeline, such as removing limitations to onshore wind deployment, speeding up the permitting process and improving the grid connection process. These measures will create more favourable market conditions for investments in renewables, demand response, storage, gas-fired generation, transmission and interconnection capacity (see recitals (82) to (85)).

6. DURATION OF THE DEROGATION

- (175) Article 64(2c), last subparagraph of the Electricity Regulation sets out that the derogation may be applied until 31 December 2028, provided that the conditions referred to in Section 5.3 above are complied with for the entire duration of the derogation.
- (176) This requirement is intended to ensure that, if the derogation is granted for three years, the conditions laid down in Article 64(2c), points (a) to (c) are not fulfilled only at the time the derogation is granted but are met until the end of the three-year period.
- (177) As mentioned in recital (2), Poland has requested a derogation from the requirement set out in Article 22(4), point (b) of the Electricity Regulation from 1 July 2025 to 31 December 2028.

- (178) The Commission refers to the assessment under Section 5.3 above and considers that the conditions laid down in Article 64(2c), points (a) to (c) of the Electricity Regulation are fulfilled for delivery year 2025. The Commission regrets that Poland conducted the first supplementary auction in May 2025, before the issuance of this Decision. However, the Commission notes that the first supplementary auction was held on the condition that the final auction results would be announced only after this Decision is adopted (see recital (30)).
- (179) The Commission also considers that Poland has put in place safeguards to ensure that these conditions will also be fulfilled for the subsequent delivery years (see e.g. recitals (27), (31), (34)). The Commission notes that, if required, Poland would hold supplementary auctions for the following delivery periods: second half of 2025 (semi-annual contract) and delivery years 2026, 2027 and 2028 (annual contracts).
- (180) Poland should inform the Commission of any changes it makes to the conditions set out in Article 64(2c), points (a) to (c) of the Electricity Regulation during the period covered by the derogation.

7. CONCLUSION

- (181) In light of the above considerations, a derogation pursuant to Article 64(2b) of the Electricity Regulation is granted to Poland, subject to the conditions described in Article 1 of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

A derogation is granted to the Republic of Poland from Article 22(4), point (b) of Regulation (EU) 2019/943 as regards the emission limit for the existing capacity mechanism approved by the Commission before 4 July 2019, subject to the following conditions:

- (a) Poland amends the NRAA to take into account the issues described in recital (145) above. In particular, the NRAA shall:
- (i) estimate the amount of electricity to be exported by Poland in the future on the basis of the result of a modelling exercise and using reasonable assumptions; and
 - (ii) estimate the likelihood of retirement, mothballing and new-build of generation assets on the basis of estimated revenues and costs over a period of 10 years, rather than for a single year; and
 - (iii) justify the assumptions on the maintenance patterns on the basis of actual maintenance schedules and explain how those patterns relate to the estimates in the NRAA in order to demonstrate that they constitute a national specificity of the Polish generator fleet;
- (b) the Polish NRA verifies whether the total amount of capacity to be procured under the updated NRAA is justified and, in particular, whether it reflects the needs of the system in situations of simultaneous scarcity.

Article 2

The Republic of Poland may allow generation capacity that started commercial production before 4 July 2019 and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity to be exceptionally committed or receive payments or commitments for future payments after 1 July 2025 in supplementary auctions under the existing capacity mechanism approved by the Commission before 4 July 2019.

Article 3

The derogation granted under Article 1 shall apply until 31 December 2028, provided that the conditions set out in Article 64(2c) of Regulation (EU) 2019/943 are complied with for the entire duration of the derogation.

Article 4

This Decision is addressed to the Republic of Poland.

Done at Brussels, 11 August 2025.

For the Commission
Dan JØRGENSEN
Member of the Commission
