

# Installation of the solar collectors in the light of Polish construction regulations

Renewable energy projects have become increasingly more popular in Poland. Though Polish energy regulations qualify a very wide array of energy sources as “renewable” (those that use for processing, among other sources, wind, solar radiation, geothermal energy, waves, water falls, biomass energy), unfortunately, because of the geographical conditions prevailing in Poland, not all are equally popular among investors. In addition, there is a web of regulations that each to a differing degree complicates the process of investing in the individual renewable energy sources.

It seems that in Poland the most popular have been undertakings focused on generating energy from wind and solar radiation. The former are usually executed on a large scale and go hand in hand with a drawn out and laborious investment process. Meanwhile, investments in solar installations can also be small scaled, and constructed at a relatively small cost. Polish law does not provide very clear guidelines for installation of solar systems, leading to differences in practices followed by construction authorities in various regions of Poland; quite often the guidelines have yet to be developed.

It is worth of reminding that, the Art. 28 of the Polish Construction Law of 7 July 1994 (the “Act”) states that any construction works can only be commenced once the investor secures a binding building permit, unless otherwise permitted under Art. 29-31 of the Act. Regulations can provide that specific investments do not require a building permit (Art. 29 and 31 of the Act), and only a notification needs to be submitted to the competent building authority (Art. 30 and 31 of the Act). There is also a third type of investment, under which planned construction works do not require a building permit and are also not subject to the requirement of submitting a notification.

As far as the execution of solar systems, Art. 29.2.16 of the Act provides that a building permit is not required to conduct con-

struction works that constitute the assembly of free-standing solar collectors. In addition, Art. 30 of the Act does not require an investor to notify of the commencement of work comprising the assembly of such installations. Is the Act always as mild with respect to every type of solar installation?

Notably, it is important to take a closer look at the specificity of the construction of a solar system, which beyond the solar battery, is made up of many other elements. Simple solar system, in addition to the solar absorber (battery) include: (i) solar installation (set of pipes filled with glycol-based solar fluid, which transports energy one way to the heat exchanger, and the cooled fluid back the other way to the collector), (ii) heat exchanger (mounted in a container with water which thanks to it heats up; linked most often to a central heating system), (iii) pumps (assuring the right flow of fluids and the correct solar fluid pressure), (iv) installation regulator (which automatically disconnects other sources heating up water in the central heating system if the energy supplied by the solar installation is sufficient to heat up the water). The solar systems available on the market usually encompass the above set of components.

It should also be noted that the word “assembly” used in the above-cited Art. 29.2.16 of the Act has not been defined in the statute. Yet, it may be assumed (according to rulings of the administrative courts) that assembly most often means construction works consisting in the “production of a new building structure from ready-made elements, joined into one complete object; this means the comprehensive production of a structure, from grounds up without linking it to other, already existing object” (ruling of 2 April 2008 issued by the Regional Administrative Court of Krakow, Case II SA/Kr 147/08).

Therefore, it seems that if a solar system is assembled to be free standing (e.g. to heat up water in a swimming pool) then it can be looked at as an installation subject to

provisions of Art. 29.2.16 of the Act, and thus not requiring the investor to secure a building permit or to submit a notification on the commencement of the related construction works.

Yet, what about the most often seen solar systems, those mounted onto building structures such as roofs or walls of single-family homes, schools or clinics? The Act is fairly unclear about this type of installations.

The easiest case is one of a solar system that will be part of a building structure that has yet to be erected. If the investor intends to equip a building with a solar system already at the stage of the design, then the installation should be included in the building project and covered by the building permit.

Meanwhile, a solar system installed on an already existing building structure represents a more complex legal issue. In that case, it would seem that the investor should take into consideration Art. 29.2.15 of the Act which states that the mounting of installations on building structures also does not require a building permit. Moreover, pursuant to Art. 30.1.3 of the Act, the obligation to submit a notification applies only to the mounting of an installation onto a building structure only if the installation has more than 3 m in height. In practice, solar batteries that are installed on roofs are rarely higher than 3 m; thus, it would seem that the mounting of a solar system integrated with an existing building structure would also not require either a building permit or a notification.

Yet, the above conclusion will not always be correct. As stated earlier – a solar system is composed of not only the solar battery but also of the entire installation that usually runs through several storeys of a building structure and in a defined spot links to another installation in the building, e.g. central heating system. The execution of such a project in an existing building structure could necessitate serious construction works, though sometimes it will simply encompass small adjustments in existing installations. How, then, should one classify works consisting in the assembly of the said solar system with an existing installation within a building structure?

The Act does not provide a clear answer. It seems that since the solar installation is usually hooked up to a central heating system in a home, then such work can be classified as the extension of the central heating installations. As assistance, let’s take a look at the ruling of the Regional Administrative Court of Krakow, in Case II SA/Kr 797/08, issued in the case regarding expansion of sewage, wa-

ter and electric installations in connection with a change in the intended purpose of a building structure. In its decision, the court stated that construction works carried out to expand the installation in structural walls of the building or representing structural changes in the building can be interpreted as the reconstruction of the building and as such require that the investor secure the relevant building permit. Meanwhile, if the works carried out to expand the installation do not constitute structural interference – then they should not be treated as ones concerning common areas of the building. In the mentioned decision, the court stated that “internal installations represent part of the building structure, and their expansion cannot be classified independently and by definition does not constitute the expansion of the structure or part thereof”. The court also determined that if, as a consequence of works relating to the expansion of existing installations, user or technical parameters of the existing building structure are not changed then they do not constitute construction works that would be subject to the building permit requirement or the notification requirement.

In addition, it is important to remember that solar batteries mounted on roofs of building structures, depending on their number and size, may also necessitate certain structural changes in the roof (to improve its durability, change in slant, drillings). If the nature of such necessary works leads to a change in the structure’s technical param-

eters, then the scope of such works would classify as reconstruction of a part of a building structure, which requires a building permit (similar always to Regional Administrative Court of Krakow, ruling of 31 January 2007, Case II SA/Kr 3189/03: “Replacement of damaged wooden sections of the roof, i.e. patches, rafter, buttresses, and replacement of the roof consist replacement of the building’s structural elements and in line with Art. 29.2.1 in conjunction with Art. 28.1 of Polish Construction Law of 7 July 1994 (Dz.U. of 2000, No. 106, item 1126, as amended) are subject to the building permit requirement.”) By analogy, we would treat likewise material changes which have to be implemented in the “basement” or “boiler room”, where the second part of the solar system has to be installed. If structural changes are necessary in the building in order to assemble a large pump or water tank – it may also be that the construction of such an installation will require the investor to obtain a building permit because it will require the reconstruction of the building.

In the light of the above, it cannot be stated definitively that anytime a solar system is to be mounted on a building structure the investor will not have to submit a notification or apply for a building permit.

Without a doubt, it would be much easier for investors to make decisions on investing in renewable energy sources if the Act was clear in what cases the mounting of a solar system does not require a building permit

(such a clear waiver can be found, for example, with respect to installations of tanks for liquid gas, to be used to feed gas installations in single-family residential buildings).

Polish regulations in this area are very much imperfect. In truth, on many plateaus that touch investments in renewable energy sources, they are wholly missing. With regulations that have for decades been in effect in other European states and the United States as inspiration, that create numerous incentives and lift barriers to eco-investments, we would hope that in the near future the Polish legislator will notice these deficiencies in the country’s legal system and will supplement them sensibly.

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