

Amended Renewable Energy Sources Act

On 7 June 2018, the Sejm passed a law amending the Renewable Energy Sources Act and Some Other Acts, whose bill was submitted in June 2017. Subsequently, the law was submitted to the President and the Speaker of the Senate. The new regulations are aimed to allow more effective utilisation of renewable energy sources and help Poland comply with international obligations.

The new Law amends the provisions of three laws: the Renewable Energy Sources Act, the Law on Investment Projects Concerning Wind Power Installations and the Building Law. As far as changes to the latter two laws are concerned, they relate to the rules governing the construction and taxation of wind farms. The proposed solutions have been designed to meet expectations of renewable energy entrepreneurs. They will also ensure harmonisation of the Polish law with the EU legislation governing public aid, and they will help achieve objectives defined in the country's strategic documents, such as the Strategy for Responsible Development (SOR), the National Action Plan for Renewable Energy (KPD) and Poland's Energy Policy until 2030 (PEP 2030). Moreover, they will enable Poland to achieve the share of renewable energy sources in final energy consumption being consistent with the country's international obligations.

The amended law introduces numerous changes to statutory definitions. The set of definitions contained in the Law has been expanded to include the definition of agricultural biomass, biocarbon, torrefacted biomass or fixed purchase price. Additionally, the definitions of energy cooperative and hybrid renewable energy installation have also been modified. The Law introduces a new rule for the accumulation of public aid al-

lowing payments to be made to generators of amounts equal to the difference between the price offered in the auction and the average electricity price, which is considered the so-called operating aid granted to producers of electricity from renewable energy sources.

Furthermore, the amended Law abolishes the ban on the upgrading of existing wind turbines which do not meet the conditions specified in the Law of 20 May 2016 on Investment Projects Concerning Wind Power Installations. According to the amended Law a wind turbine can be upgraded provided that that the upgrade does not boost its environmental impact, and it does not increase its installed capacity. The amended Law also extends the time for construction and launch of wind farms failing to meet the provisions of the Law on Investment Projects Concerning Wind Power Installations but having a valid construction permit until mid-2021.

Moreover, the Law introduces solutions aimed to protect residents and owners of real properties on which wind farms have been located from possible damage caused by operation of wind power installations. The Law provides that the property made available for the needs of a wind power installation will be restored to the original condition, i.e. it must be returned in non-deteriorated condition upon the completion of the plant's operation.

The proposed solutions resolve interpretation doubts concerning taxation of wind turbines with real estate tax. The current regulations allow for taxation of both the building part and technical part of the wind turbine, though it should be noted that the local authorities interpret the law differ-

ently. The amended Law aligns the regulations in a manner more favourable to the taxpayers. It modifies the definition of structure in the Act of 7 July 1994 Building Law, stipulating that only building structure elements of wind power plants should be classified as the structures in question. On the other hand, the definition of structure in the Building Law relates to the Law of 12 January 1991 on Local Taxes and Charges. As a result of the changes, the real estate tax will be charged only on building structure elements of wind turbines (foundations and masts), not the equipment (nacelle, blades, steering system). Importantly, the planned changes will come into effect retroactively as of 1 January 2018. In practical terms, the taxpayers who declared the 2018 real estate tax with respect to the entire wind power plant will be able to request refund of the overpaid tax. Some municipalities will be required to return legally collected tax, which in selected cases can amount to millions of zloty. The municipalities and communes argue that the adopted regulations might not be consistent with the Constitution and some of them have already appealed to the President to send the Law to the Constitutional Tribunal.

To avoid unconstitutionality charges, the Senate's Legislation Bureau put forward an amendment to the effect that the changes should take effect as of 1 January 2019. The same proposal has been submitted on behalf of all local authorities. However on 29 June 2018 the Senate passed the Law with no amendments. The Law is now awaiting the President's signature. Additionally, the Deputy Minister of Energy has announced that the government is about to start work on another package of regulations applicable to renewable energy sources, which should come into force by the end of 2018.

Małgorzata Fituch

Trainee barrister

Miller, Canfield, W. Babicki, A. Chelchowski i Wspólnicy Sp.k.