

2020 YEAR-END A PERIOD OF INTENSIVE LEGISLATIVE WORK ON ENERGY SECTOR REGULATIONS

The Polish government has sent a draft Act Promoting the Production of Electricity in Offshore Wind Farms to the parliament for discussion. Work continues on amendments to the Act on Renewable Energy Sources and the so-called "Distance" Act. The government is also drafting regulations on the storage of energy and use of hydrogen in transport.

OFFSHORE POWER ACT

On 27 November 2020, the Council of Ministers accepted in voting by circulation the Act Promoting the Production of Electricity in Offshore Wind Farms, the so-called Offshore Power Act.

The Act is to introduce a dedicated support system for offshore wind power and improve and streamline the process by which offshore wind farms are developed in the Polish exclusive economic zone in the Baltic Sea.

Under the draft, the support mechanisms would have two stages:

- phase I – limited in time and in terms of installed capacity to 5.9 GW – support will be awarded to investors in the direct model on the basis of an administrative decision. Based on the rule of "first come, first served", decisions are to be issued by the Energy Regulatory Office and then approved by the European Commission;
- phase II – during which support will be awarded at competitive auctions in which investors will compete for the right to support on terms similar to those that are in force based on the provisions of the Act on RES.

Status – The draft has been sent to the parliament, which can make further changes. According to press release, the Sejm will deal with it on 10 December 2020. The Act should come into force at the beginning of 2021.

AMENDMENTS TO THE ACT ON RES AND THE DISTANCE ACT

Representatives of the Ministry of the Climate and the Environment (hereinafter the "MoCE") announced that work on amendments to the Act on Renewable Energy Sources is in progress. The amendments are aimed at, inter alia, decreasing the regulatory burdens for installations of up to 1 MW,

which will be exempted from the requirement to hold a licence to produce electricity.

The MoCE also plans to extend the duration of the support system for RES installations based on the so-called auction system.

Status – Currently the draft amendments to the Act on RES are at the stage of consultation and evaluation.

At the end of August, the Ministry of Development announced work on amendments to the so-called Distance Act (i.e. the Act on Wind Energy Investments). The amendments to the Act are to ease the so-called "10h rule", which is currently preventing the development of new wind farm investments situated at a distance less than 10 times the height of the turbine from an existing or planned residential development. According to the declarations of the Ministry of Development, the location of a new wind turbine could be based only on a local master plan drafted for the entire 10h area around the planned wind turbine. As part of the local master plan and based on the forecast of the impact on the environment, a municipality could decrease the required distance, but subject to adherence to an absolute minimum distance (which could not be less than 500 m). The final form of the amendments to the Distance Act the ministry will decide to send for public consultation and further parliamentary work has not yet been decided.

Status – Media reports indicate the Act was supposed to be adopted by the end of 2020, but as at the date hereof the draft has not been made public.

NEW REGULATIONS ON STORAGE OF ENERGY

In the second half of November 2020 the Polish government accepted a draft of material amendments to the Act – Energy Law (hereinafter the "EL Amendment"). Among a number of new regulations with regard to the functioning of the energy sector in Poland, regulation of the terms of business of electricity storage is proposed.

The EL Amendment is to introduce the first comprehensive regulatory framework for the development and operation of energy storage installations in Poland. Their purpose is primarily to ensure the compliance of Polish legislation with EU legislation and to create effective incentives for the development of energy storage in the context of the increasing share of RES in the Polish energy mix.

The solutions proposed by the government include the following:

- introducing systemic definitions of "storage facility" and "storage of electricity";
- introducing the requirement to hold a licence only in relation to storage facilities with a power of **more than 10 MW**. Smaller installations (above **50 kW**) will have to be entered in a register kept by the relevant grid operator;
- introducing regulations on the connection of storage facilities to a grid, including exempting storage facilities from paying half the interconnection fee;
- exempting storage facilities from the obligation to apply tariffs;
- introducing the possibility of integrating storage facilities with RES installations – storage facilities' offtake of electricity from the grid will not

affect the rights of producers under the support systems (with regard to both green certificates and rights to cover a negative balance arising from an auction);

- abolishing the double charging of grid fees in relation to the storage of energy;
- grid operators will be required to take storage facilities into account in their development plans.

According to the government's plans, the regulations introduced will primarily contribute to ensuring power reserves in the National Energy System, limit short-term fluctuations in the production of energy in RES installations and level the profile of their operation.

Status – The EL Amendments have been sent to the parliament, which can make further amendments. The new regulations are expected to be adopted at the beginning of 2021.

NEW REGULATIONS ON THE USE OF HYDROGEN IN TRANSPORT

The MoCE has initiated legislative work on amendments to the Act on Electromobility and Alternative Fuels (hereinafter the "Amendments to the EAF Act"), which came into force in 2018. The aim of the work is to set out a regulatory framework for the use of hydrogen in transport.

As part of the proposed amendments, regulations dedicated to hydrogen-powered transport are presented for the first time. In this regard, the Amendments to EAF Act:

- provide definitions of "hydrogen" (as fuel for propelling motor vehicles), "hydrogen filling station", "hydrogen filling point" and "hydrogen filling station operator";
- specify the obligations of a hydrogen station operator with regard to, inter alia, registration of activity, technical condition and safe operation of stations, technical testing and provision of hydrogen filling services;
- provides for supervision by the President of the Technical Supervision Office over the technical condition of hydrogen filling stations; in this regard the stations must satisfy the technical and operational requirements laid down in, in particular, Polish Standards, and in secondary legislation issued on the basis of the Act on Electromobility and Alternative Fuels by the minister in charge of energy;
- imposes on contracting authorities (central administration and local governments) further obligations to ensure the appropriate share of electrical and hydrogen-powered vehicles in the fleets those authorities use;
- exempts low-emission vehicles (including those powered by hydrogen) with a total mass exceeding 3.5 tonnes from charges for travelling on national roads;
- introduces the possibility of hydrogen-powered vehicles' using bus lanes;
- introduced a fixed depreciation rate of PLN 225,000 for hydrogen-powered vehicles for tax purposes.

The draft Amendments to the EAF Act are primarily focused on the issue of the safety of constructing and operating hydrogen filling stations and on regulatory mechanisms designed to act as incentives for users of electrical and hydrogen-powered vehicles. In this regard, it does not provide for any new mechanisms of financial support for persons and institutions interested in buying hydrogen-powered vehicles.

Status – The MoCE has sent the Amendments to the EAF Act for public consultation. Comments may be made until 11 December 2020. At present, it is difficult to predict when the draft will reach parliament and come into force.

At the same time, work on preparing the Hydrogen Strategy determining the long-term objectives of the hydrogen sector in Poland is in progress at the MoCE.

As legal partner of the Working Group for Hydrogen Technologies, which operates under the auspices of the Polish Alternative Fuels Association, Clifford Chance is monitoring work on the Amendments to the EAF Act and on the Hydrogen Strategy on an ongoing basis.

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