

# The draft amendment of the Act on RES in the Sejm

The draft amendment of the Act on Renewable Energy Sources<sup>1</sup> ("**RES**") which has been announced in the past weeks by the representatives of the Ministry of Energy was finally sent to the Sejm on 6 May 2016 (the "**Draft**"). The Draft was prepared by the government, but the Sejm will process it as if the Draft had been prepared by the Deputies to the Sejm. The purpose of such a solution is to shorten the legislative procedure and to skip public consultations so that the regulations contained in Draft could be adopted and implemented quicker. The explanation for processing the Draft in such a rush results from the fact that the new provisions of Chapter 4 of the Act on RES, containing material modifications to the existing RES support scheme (i.e. primarily changes to the already functioning system of green certificates and the introduction of an auction system as the target RES support system) should come into force as of 1 July 2016<sup>2</sup>. As the Draft introduces further changes to the regulations set out in Chapter 4 of the Act on RES which have not yet entered into force, the Ministry of Energy's desire is that only those regulations proposed by Ministry and not the ones proposed by the previous parliament be implemented. In consequence, pursuant to the Draft, the new regulations would enter into force on 1 July 2016.

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<sup>1</sup> Act on Renewable Energy Sources of 20 February 2015 (Journal of Laws 2015.478, as amended).

<sup>2</sup> In its original version the Act on RES provided that the above regulations would come into force on 1 January 2016. This date was deferred to 1 July 2016 by the Act Amending the Act on RES of 29 December 2015.

## Lack of mandatory energy purchase from large RES installations

The Draft suggests that large RES installations (of a capacity equal to or higher than 500 kW) will be deprived of the mandatory energy purchase by the obliged seller, which has been one of the pillars of RES support system functioning up to date. Producers selling RES energy at market prices should not suffer from the change considerably. For the ones selling energy at URE price, however, the new regulation may be of significant importance.

The change relating to the lack of the mandatory purchase of RES energy, in connection with the rather unfortunate reference by regulations concerning green certificates to the previous regulation on mandatory purchase of RES energy, may even give rise to doubts as to the possibility of obtaining green certificates by large RES installations. These regulations surely require being made more precise in the course of further work on the Draft.

## Reduction of the RES Quota for 2017

By an ordinance to be issued no later than on 30 November 2016 the Minister of Energy will reduce the level of the RES quota for 2017 (below 20%).

## The auction system

The Draft maintains the auction RES support system implemented by way of the Act on RES, but at the same time it introduces substantial modifications to it. First of all, it assumes the division of auctions into technological baskets, which are defined not by a reference to the type of technology (wind, sun, etc.), but by reference to the efficiency of an installation, the volume of CO<sub>2</sub> emission and other criteria. Thus, auctions will be held separately for the individual groups of RES installations:

- installations with a level of use of the total installed electricity generation capacity, regardless of the source of origin, greater than 3504 MWh/MW/year;
- installations that in part use biodegradable waste to generate electricity;

- installations that emit not more than 100 kg/MWh of CO<sub>2</sub>, with a level of use of the total installed electricity generation capacity greater than 3504 MWh/MW/year;
- by members of an energy macro-cluster;
- by members of an energy micro-cluster;
- installations other than those mentioned above.

It follows from the justification of the Draft, that technological baskets are to promote to a greater degree technologies that generate electricity "in a stable and predictable manner".

For each of the aforementioned categories, the Draft envisages separate auctions for installations with capacity not exceeding 1 MW and for those exceeding 1 MW.

The first auction is to be announced still in 2016.

The following issues shall be determined by way of ordinances to be issued no later than on 31 August 2016:

- the order in which auctions are to be held in 2016 (an ordinance of the Council of Ministers based on a motion of the Minister of Energy);
- the maximum volume and value of electric energy generated by RES installations belonging to each of the particular technological baskets that may be sold under the auctions in 2016 (ordinance of the Council of Ministers);
- reference price - not later than 30 days before the date of the first auction in 2016 (ordinance of the Minister of Energy).

The Draft also eliminates the guaranteed 15 year support period for auction winning projects. It envisages a possibility to determine the duration of support by way of an ordinance of the Minister of Economy provided that the support may not last longer than 15 years. In determining the support duration under the auction scheme, the Minister should take into account "the energy policy of the State, the share of RES energy and fuels consumed in the energy sector and transport up to date, the safety of functioning of the energy system, as well as obligations arising under international treaties". This means that the duration of the support for auction winning projects is currently unknown and in practice it may be considerably shorter than 15 years.

## RES Installation

The definition of "*RES installation*" has been changed. For a RES installation the Draft keeps the criterion of a separated set of power generation devices (*wyodrębniony zespół urządzeń wytwórczych*), however the requirement to possess one point of interconnection to the grid has been dropped. It follows from the justification to the Draft, the above change is intended to eliminate the problems notified by investors that arose of the basis of the existing definition and the requirement to have "*one point of interconnection*". It would therefore appear that in light of the new definition of a RES, it will be possible to expand existing installations and to interconnect new generation capacities without the risk that they will be classified as one RES installation (together with the first phase of a project) and will benefit from the RES support system for a shorter period of time.

The draft also introduces the definition of a "*hybrid RES installation*", that is a complex of at least two RES installations that have different availability characteristics of the electrical energy generated and which as a result of their merger form a coherent, in terms of power generation and area, unit ensuring energy off-takers with uninterrupted access to electrical energy in accordance with the quality requirements set out in the provisions of the energy law or in the agreement concluded with the energy off-taker. Pursuant to the justification to the Draft, the above change is intended to promote installations which, through the integration of various RES sources, will be characterised by a greater stability of power generation.

## Local biomass

With respect to RES installations incinerating or co-incinerating biomass, the Draft introduces the requirement of a minimum share of local biomass in the total mass of biomass delivered to the incineration process (the size of the participation of local biomass will be specified in the implementing legislation to the Act on RES). Therefore, the Draft defines local biomass as biomass procured originally (i.e. from the first producer) from an area located within a radius of not more than 300 km from the power generation unit in which it will be used. The manner of documenting the origin of local biomass, for the purposes of the support system, and the admissible ways of originally procuring local biomass will be specified in the implementing ordinance of the Minister of Energy.

It follows from the justification to the Draft that the proposed change is intended to ensure, to all RES installations, the possibility of procuring biomass in a quantity necessary for their functioning, and, moreover, results from the conviction that the transport of biomass for longer distances is not justified from the environmental point of view.

If the requirement concerning the minimum share of local biomass is not fulfilled by a given installation – green certificates will not be allocated with respect to the relevant quantity of electrical energy.

## Dedicated multi-fuel firing installations

The Draft introduces a very important change to the definition of a "*dedicated multi-fuel firing installation*" – as it primarily eliminates the requirement that such an installation must be specified in the licence issued before 30 June 2014. In consequence, the list of dedicated multi-fuel firing installations will remain open and it will be possible to create new multi-fuel firing installations also after 1 July 2016. Thus, there are no obstacles to adapting an installation to the requirements of the definition in the future and to benefit from the RES support like dedicated multi-fuel firing installations do.

Pursuant to the Draft, the limitation concerning the maximum number of certificates of origin that can be obtained for a multi-fuel firing installation in relation to the average annual quantity of electrical energy produced in the years 2011-2013 will not apply to dedicated multi-fuel firing installations. The multi-fuel firing installations will be able to participate in auctions.

## Energy clusters

The Draft introduces the concept of an energy micro- and macro-cluster. These clusters will constitute civil law agreements between various entities<sup>3</sup>, concerning the

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<sup>3</sup> which can include natural persons, legal persons, entities without legal personality, scientific units, research and development units or local government units;

generation and balancing of the demand for or trading in energy from RES or other sources or fuels, within one distribution network, not exceeding the boundaries of one *powiat* (in the case of a macro-cluster) or one municipality (in the case of a micro-cluster).

Conducting energy-related activities within an energy cluster will be possible on the basis of one energy licence issued to the entity coordinating that part of the joint venture on the basis of an agreement with the other entities. Clusters will be able to participate in the auctions and will benefit from separate technological baskets dedicated exclusively to micro- and macro-clusters.

## Notification

At present it is not known when the above Draft will be adopted, however it is to be expected that the Sejm will deal with it promptly, possibly already during the next session of the Sejm, i.e. 11-13 May. Furthermore, from the justification of the Draft it follows that it does not contain

technical provisions and, therefore, does not need to be notified to the European Commission. Despite the above position of the authors of the Draft, it is doubtful whether in fact the proposed regulations indeed do not need to be the subject of notification. The conducting of the notification procedure would most assuredly delay the moment of entry into force of the regulations contained in the Draft.

The Draft in its currently proposed form assumes quite significant modifications to regulations of the RES support system introduced by the RES Act, both in respect of the "green certificate system" and in respect of the auction system. These may have a significant impact on projected and existing wind farm projects. Furthermore, it should be noted, that the Draft is focused on ensuring the broadest possible support for multi-fuel firing installations and installations operating based on biomass. It may therefore be expected, that further work on the Draft aims at reducing support for wind farms on one side, and at promoting multi-fuel firing and biomass on the other.

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