

Green certificate prices on the Polish Power Exchange to rise after the announcement of intervention

The Ministry of Economy has announced that it will fight against low green certificate prices on the Polish Power Exchange. After the Ministry of Economy announced that it will consider an intervention in the market for certificates of origin, the market reacted with an abrupt rise in certificate prices on the Polish Power Exchange. Green certificate prices rose immediately by even as much as 37%.

Before the Ministry of Economy announced the intervention, we observed a reduction in green certificate prices on the Polish Power Exchange for more than a year. According to the statistics provided by the Polish Power Exchange, green certificate prices went regularly down from ca. PLN 278/Mwh in February 2012 to ca. PLN 99 /Mwh in February 2013. The growing oversupply

of certificates of origin of power from renewable energy sources (RES) resulted in price reductions to even PLN 99/Mwh in the middle of February 2013 thus causing concerns in the renewable power industry.

In addition to the intervention in the market for certificates of origin, the Ministry of Economy has announced amendments to regulations to solve the growing problem of oversupply of green certificates in the market. The amendments will, in particular, limit the number of certificates of origin granted for electric energy generated in multi-fuel combustion technology and eliminate support for water power plants with a capacity above 0.3 MW under the new Renewable Energy Sources Act.

EUR 72.9 billion of EU funds for the period 2014 - 2020 as a chance for investors in RES

During the European Council meeting in Brussels on 7-8 February 2013, decisions regarding the EU budget for the period 2014-2020 were made. After the European Council's decisions are approved by the European Parliament, Poland will remain the greatest beneficiary of the funds for the EU's cohesion policy for the period 2014-2020 and will receive EUR 72.9 billion.

On 15 January 2013, the Council of Ministers adopted assumptions to the Partnership Agreement with the European Commission, which determines the method and scope of investing EU funds. EU funds will be invested in 3 main areas with the most important one being increase in competitiveness of the Polish economy, including increase in energy efficiency, diversification of energy sources and investment in green energy. The allocation of the EU funds for Poland in the period 2014-2020 to supporting

low-emissions economy, including renewable energy sources, is likely to range between 4.8 and 9,3 % (in the period 2007 - 2013, it was 2.02 % of EU funds). For this purpose, a national programme entitled "European Regional Development Fund, Cohesion Fund" and 15 Regional Operational Programmes will be implemented. Greater support of the EU funds is a chance for investors to receive more funds for investments in renewable energy.

Currently, the Ministry of Regional Development is preparing documents to form a basis for utilisation of the EU funds. According to the schedule of works presented by the Ministry of Regional Development, the works on preparation of documents will be completed in June 2013 as the plan of distribution of the EU funds among individual priorities will be presented.

Draft amendments to the Building Law discussed by a special subcommittee

On 30 July 2012, MPs' draft of the Act on Amendment to the Building Law Act and to the Act on Spatial Planning and Development, which was prepared by the parliamentary opposition, was submitted to the Sejm, lower chamber of the Polish parliament. On 21 February 2013, the first reading of the draft Act took place at the meeting of the Infrastructure Committee and Local Government and Regional Policy Committee. Thereafter, the draft was referred for further discussions in a special subcommittee.

The draft amendments to the Building Law Act introduces strict provisions putting a ban on constructing wind power plants with a capacity in excess of 500 kW at a distance of less than 3 km from residential buildings and wooded areas. If the above regulation becomes effective, the areas where wind farms may be located will be significantly reduced.

Further, according to the draft Act, power plants with a capacity in excess of 500 kW which were operated or constructed before the Act became effective, should be adjusted to meet the requirements imposed by the Act by 31 December 2017. In practice, if such provision enters into force, many facilities which are

operated in accordance with the current regulations will have to be closed.

The draft Act also provides for amendments to the spatial planning law. If no local spatial development plan has been prepared, the methods and conditions of development of land are determined on the basis of decisions on development conditions, except for power plants with a capacity in excess of 100 kW. Power plants with a capacity in excess of 100 kW will be located solely on the basis of local spatial development plans. Lack of legal possibility to locate wind farms on the basis of decisions on development conditions will significantly extend many investment processes in connection with construction of wind farms.

Taking into account increasingly more frequent opinions of social non-government organisations, protests of local communities against construction of power plants and representatives of the government regarding the necessity to develop clear and organised location procedures for wind farms, a similar legislative initiative will be also taken by the government in order to eliminate projects implemented on the brink of or outside the law.

Taxation on sun collectors

From the viewpoint of the real estate tax, there are justified doubts as to whether a sun collector may be considered a civil structure as defined by the Act on Local Taxes and Charges and be subject to an annual tax of 2 percent of their value.

In defining civil structure, the Act on Local Taxes and Charges refers to the Building Law Act. The open and inaccurate definition of civil structure always arouses justified doubts of entities interested in construction of photovoltaic farms and authorities responsible for charging real

estate tax. In consequence, the above issue regarding taxation on sun collectors became an object of a parliamentary question of 23 January 2013.

In response to parliamentary question No. 13671/13 of 18 February 2013, the Minister of Finance stated that free-standing sun collectors are not building components which might be considered civil structures as defined by the Building Law Act. In consequence, in the opinion of the Minister of Finance, sun collectors are generally not subject to real estate tax.

However in our opinion, the response of the Minister of Finance to the parliamentary question should be approached carefully. The opinion expressed therein is not binding for tax authorities and may be changed. It should be also borne in mind that the matter of classifying sun collectors for the purposes of real estate tax

always requires comprehensive knowledge. Therefore, in case of doubts a borough leader or mayor of a city, in its capacity as a tax authority in charge of real estate tax matters, may appoint an expert authorised to issue opinions on such matters.

For further information please contact us.



Maciej Prusak
Partner I adwokat

maciej.prusak@bsjp.pl
T: +48 58 340 43 85
M: +48 609 293 810



Dominik Sołtysiak
Partner I adwokat

dominik.soltysiak@bsjp.pl
T: +48 22 279 31 00
M: +48 609 293 811

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BSJP Brockhuis Jurczak Prusak Sp. k., ul. Chmielna 19, 00-021 Warszawa, Tel. +48 22 279 31 00, Fax +48 22 279 31 11,
E-Mail: info@bsjp.pl, www.bsjp.pl