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JUSTYNA WĘGLIŃSKA
Uniwersytet Komisji Edukacji Narodowej w Krakowie
justyna.weglinska@uken.krakow.pl
ORCID: https://orcid.org/0000-0003-2196-8881

LEGAL ASPECTS OF INVESTMENTS IN RENEWABLE ENERGY SOURCES IN POLAND – SELECTED ISSUES

Abstract. Construction and operation of renewable energy sources (hereinafter: "RES") installations in Poland is inevitably linked with obligation to meet certain requirements imposed by public law, including, but not limited to, obtaining an environmental decision, a zoning permit, a building permit or notifying building authorities as well as obtaining an occupancy permit. However actual requirements vary depending on the capacity of the installation and localization conditions in a given area. Thus, it is reasonable to identify all legal requirements connected to potential investment *in concreto*. The aim of this paper is to present current regulations stemming from the Polish law which shall be taken into consideration when planning investment process concerning construction and further operation of RES installations in Poland, especially with regard to micro installations and small installations. The analysis encompasses legal issues regarding the application process for the environmental decision, relevant regulations stemming from the Act of 27 March 2003 on spatial planning and land development, which was significantly amended in 2023 as well as formalities concerning construction. Also, the article present fundamental rules concerning grid connection obligations as well as issues concerning licensing.

Keywords: renewable energy sources; energy law; public law

INTRODUCTION

Construction and operation of renewable energy sources (hereinafter: "RES") installations in Poland is inevitably linked with obligation to meet certain requirements imposed by public law. In particular, it is required to obtain an environmental decision, a zoning permit, a building permit as well as an occupancy permit. However, the scope of all public law requirements shall be always assessed *in concreto*, as it depends on several factors, such as the capacity of the RES installation or localization conditions in a given area. The aim of this paper is to present current regulations stemming from the Polish law which shall be taken

into consideration when planning investment process concerning construction and further operation of RES installations in Poland, especially with regard to micro installations and small installations. Notably, the analysis encompasses legal issues regarding the application process for the environmental decision, relevant regulations stemming from the Spatial Planning Act,[1] which was significantly amended in 2023 as well as formalities concerning construction. Also, the article present fundamental rules concerning grid connection obligations as well as issues concerning licensing.

1. RENEWABLE ENERGY SOURCES – DEFINITIONS

At the outset it is reasonable to present key definitions which shall be considered when analyzing legal aspects of investment process in RES installations in Poland. *De lege lata* such definitions are contained in the RES Act.[2] In principle, under art. 2 point 22 of the RES Act, a "renewable energy source" is defined as renewable, non-fossil energy sources including wind energy, solar energy, aerothermal energy, geothermal energy, hydrothermal energy, hydropower, wave, current and tidal energy, ambient energy, energy obtained from biomass, biogas, agricultural biogas, biomethane, bioliquids and renewable hydrogen.[3] Furthermore, in accordance with art. 2 point 13 of the RES Act, a "renewable energy source installation" is defined as a system consisting of a separate set of equipment for the production of electricity or heat or cooling as described by technical and commercial data, in which electricity or heat or cooling is produced from renewable energy sources, or buildings and equipment constituting a technical and functional unit for the production of biogas, agricultural biogas, biomethane or renewable hydrogen as well as a combined electricity storage facility, biogas storage facility or storage facility within the meaning of Article 3 point 10a of the EL[4] used for the storage of agricultural biogas, biomethane or renewable hydrogen.[5]

[1] The Act of 27 March 2003 on spatial planning and land development (Journal of Laws of 2024, item 1130) (hereinafter: "the Spatial Planning Act").

[2] The Act of 20 February 2015 on renewable energy sources (Journal of Laws of 2024, item 1361) (hereinafter: "RES Act").

[3] See also: W. Karpiński, M. Szyrski, *Komentarz do art. 2*, [in:] *Ustawa o odnawialnych źródłach energii. Tom II. Komentarz*, M. Czarnecka, T. Ogłódek (eds.), Warsaw 2023, thesis 25.

[4] The of 10 April 1997 – Energy Law (Journal of Laws of 2024, item 266, as amended) (hereinafter: "the EL").

[5] According to art. 3 point 10a of the EL, storage facility means an installation used for storing gaseous fuels, including a tankless natural gas storage facility and gas pipeline storage capacities,

It shall also be noted that the RES Act differentiates between micro installations, small installations and other installations. Firstly, micro installations shall be understood as installations with a total installed electrical capacity of not more than 50 kW, connected to an electricity grid with a nominal voltage of less than 110 kV, or with a cogenerated heat output of not more than 150 kW, where the total installed electrical capacity is not more than 50 kW. Secondly, small installations are defined as installations with the total installed electrical capacity greater than 50 kW and less than or equal to 1 MW, connected to an electricity grid with a nominal voltage of less than 110 kV, or with the cogenerated heat output greater than 150 kW and less than 3 MW, where the total installed electrical capacity is greater than 50 kW and less than or equal to 1 MW. Thirdly, other installations shall encompass installations with a total installed capacity exceeding 1 MW.[6]

The above-described distinction is vital since qualification of a given RES installation as one of those categories determines the requirements for the investment process, licensing and support schemes depending on the installation's capacity. In principle, the implementation of a RES installation depends on the type of project and its capacity. Notably, the RES Act does not separately regulate the investment and construction process for RES installations. Consequently, the implementation of a given type of installation requires application of a standard investment and construction procedure as well as the acquisition of necessary administrative decisions based on the laws specific for the given issues.

2. ENVIRONMENTAL DECISION

In general, the construction of RES installation requires obtaining an environmental decision. It is one of the first decisions that shall be obtained before implementing a RES installation. Rules regulating this issue are contained in the Act on Environment.[7] In a nutshell, if the planned investment does not meet environmental requirements described in the environmental decision, it cannot

owned by an energy company or operated by that company, including the part of the liquefied natural gas installation used for its storage, excluding that part of the installation that is used for production activities and the installation used exclusively for the performance of the tasks of gas transmission system operators.

[6] See also: A. Frąckowiak, *Komentarz do art. 2*, [in:] *Ustawa o odnawialnych źródłach energii. Komentarz*, eds. J. Baehr, P. Lissoń, J. Pokrzywniak, M. Szambelańczyk, Warsaw 2016, thesis 16-17.

[7] The Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws of 2024, item 1112) (hereinafter: "the Act on Environment").

be implemented and may be questioned at a later stage. Issuance of the environmental decision takes place before obtaining administrative decisions required at a further phase of the investment, among others a zoning permit and a building permit.

According to art. 71 item 1 and 2 of the Act on Environment, an environmental decision sets out the environmental conditions for the implementation of a project. Obtaining an environmental decision is required for planned projects always likely to have a significant environmental impact as well as projects potentially likely to have a significant environmental impact. Consequently, application for an environmental decision is not required for all planned projects, but only for those that have been classified as projects that may have the so-called significant impact on the environment.[8]

In the view of the foregoing, attention shall be drawn to recent amendments in the Polish legislation. According to provisions of the regulation of the Council of Ministers on projects likely to have a significant impact on the environment,[9] as amended on 23 September 2023, photovoltaic installations are classified as projects that potentially may have a significant impact on the environment in the cases where the development area is not less than 0.5 ha in areas covered by forms of nature conservation or in the buffer zones of forms of nature conservation referred to in the Act on Environment or 2 ha in areas other than those listed above, with the exception of development of photovoltaic systems located on the roofs and facades of buildings.

Examination of the compliance of the decision on development conditions with the requirements of the decision on environmental conditions is the basic obligation of the administrative bodies issuing the location decision. If there is a discrepancy between the parameters or location of the investment indicated in the proceedings concluded with the issuance of a decision on environmental conditions and the location adopted in the proceedings on development conditions, then, given the location indicated for the purposes of issuing a decision on development conditions, it is not possible for the investment to meet the parameters specified in the decision on environmental conditions.

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[8] See: K. Gruszecki, *Komentarz do art. 71*, [in:] *Komentarz do ustawy o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko*, Warsaw 2023, thesis 2; T. Filipowicz, *Komentarz do art. 71*, [in:] *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, eds. T. Filipowicz, A. Plucińska-Filipowicz, M. Wierzbowski, Warsaw 2024, thesis 4.

[9] Regulation of the Council of Ministers of 10 September 2019 on projects likely to have a significant impact on the environment (Journal of Laws item 1839, as amended).

What follows is that in the light of current regulations under the Polish law the obligation for an environmental decision depends on size of a RES or its location. In the case of RES installations, which will cover an area of less than 2 ha or less than 0.5 ha, as well as areas covered by forms of protection, obtaining an environmental decision is not required. Similarly, the environmental decision is not required with regard to photovoltaic systems located on the roofs and facades of buildings.

3. SPATIAL PLANNING AND LAND DEVELOPMENT

Another important issue which shall be taken into consideration when planning an investment in the RES installation in Poland is spatial planning and land development. In principle, relevant legal provisions are contained in the Spatial Planning Act and the Construction Law.[10]

As a general rule, any new building structures need to be compliant with a binding local zoning plan (hereinafter: "LZP"). It principle, LZP shall be understood as local act of law describing how a given area in a municipality can be used and what are further conditions for such use including conducting investments. Consequently, construction of an RES installation can take place on the basis and in accordance with conditions specified in LZP. If there is no such plan, under art. 59 item 1 of the Spatial Planning Act, an administrative decision called the zoning permit, if required.[11] Based on the Spatial Planning Act, in case of lack of LZP, obtaining a zoning permit is necessary only in the case of a change in the manner of development of a given plot of land.[12]

It shall be underscored, however, that according to art. 50 item 2 point 1 and 2 of the Spatial Planning Act in connection with art. 59 item 1 of the Spatial Planning Act, a zoning permit is not required in the case of construction works consisting in renovation, assembly or reconstruction, if they do not cause a change in the manner of land development and use of the building object and do not change its architectural form and are not classified as projects requiring an environmental impact assessment procedure, or which do not require a construction permit.[13]

[10] The Act of 7 July 1994 – Construction Law (Journal of Laws of 2024, item 725, as amended) (hereinafter: "the Construction Law").

[11] See: T. Tymosiewicz, *Komentarz do art. 59*, [in:] *Planowanie i zagospodarowanie przestrzenne. Komentarz*, eds. J.H. Szlachetko, K. Szlachetko, Warsaw 2024, p. 545-546.

[12] See: I. Zachariasz, *Komentarz do art. 59*, [in:] *Planowanie i zagospodarowanie przestrzenne. Komentarz*, eds. H. Izdebski, I. Zachariasz, Warsaw 2023, p. 565-566.

[13] See: Z. Niewiadomski, *Komentarz do art. 50*, [in:] *Planowanie i zagospodarowanie przestrzenne. Komentarz*, ed. Z. Niewiadomski, Warsaw 2023, p. 495-496.

Furthermore, it shall be noted that the Construction Law requires that a competent authority, once issuing a construction permit, needs to verify the compliance of a building design with LZP or with a zoning permit. Therefore, in each case when a building permit is required, it will be also necessary to obtain a zoning permit first, unless on a given territory there is a binding LZP.

However, on 7 July 2023, the Spatial Planning Act was significantly amended. At the outset it shall be noted that before the amendment, a spatial planning studies[14] (hereinafter: "SPS") was basic zoning documents for a given commune determining the spatial policy of the commune, including the general local principles of spatial development. The provisions of SPS itself are not binding on the authorities issuing zoning permits due to the fact that SPS, as a preparatory document for an LZP, is not an act of local law.

Importantly, under the amendment of the Spatial Planning Act, SPS shall remain in force until a new type of spatial planning act, the municipality's local plan (hereinafter: "the Local Plan"), has been adopted, but no later than 31 December 2025. Consequently, until the Local Plan is adopted, but in any event no longer than until 31 December 2025, the former rules of localization of RES installations will have to be followed. After this date, the SPS shall expire. The Local Plan will be adopted by the commune council for the entire area of the commune, excluding closed areas. In principle, the Local Plan will have the force of general law. A SPS, by comparison, is an internal act of law, not binding on citizens. The Local Plan will introduce planning zones (e.g. industrial zone, service zone, infrastructure zone) and commune urban planning standards (e.g. development parameters).

According to new regulations which entered into force in September 2023 (with the reservation that in the transitional period until 31 December 2025 former rules may apply), RES installations not located on buildings, but located on agricultural land of classes I-III and forestry land, on agricultural land of class IV, with an installed electrical capacity of more than 150 kW or used for the business of generating electricity, or on land other than that indicated in points a and b, with an installed electrical capacity of more than 1,000 kW may only be built on the basis of the provisions of the LZP.

Before the aforementioned amendment, RES installations could have been built in two ways – on the basis of the provisions of the LZP or, in its absence, on the basis of a zoning permit. Currently, the commune is required to designate in SPS areas for the deployment of equipment generating energy from renewable energy sources with an installed capacity of more than 500 kW, with the exclusion of free-standing photovoltaic devices with an installed capacity of no more

[14] In Polish: *studium uwarunkowań i kierunków zagospodarowania przestrzennego*.

than 1,000 kW located on agricultural land constituting agricultural land of classes V, VI, VIz and wasteland as well as devices other than free-standing devices.

To summarize, as a rule, all free-standing RES installations located on protected land of classes I-III or installations with a capacity greater than 150 kW (for land of class IV) or 1,000 kW (for land of other classes), will only be possible on the basis of an LZP. It shall also be noted that according to art. 15 item 4 of the Spatial Planning Act, LZP providing for the possibility of the location of buildings also allows for the location of building-mounted renewable energy source installations using only solar energy for energy generation and micro-installations also in the case of a land use other than manufacturing, unless the provisions of the LZP prohibit the location of such installations. Notably, compliance with the above requirements is necessary regardless of the title to land held by the investor.

Additionally it shall be underscored that another significant amendment introduced in 2023 is the so-called simplified procedure for the adoption of a Local Plan. In a nutshell, the aim of this solution is to accelerate the investment process related to the location of RES installations. The simplified procedure does not include the stage of collecting applications for the draft Local Plan. In addition, the head of the commune, mayor or city president is obliged to simultaneously apply to the governor for consent to the application of the simplified procedure, apply for opinions and agreements, and also announce the commencement of social consultations and conduct them. In the context of the aforementioned consent of the governor, the body refuses to grant it if the draft local plan or its amendment does not meet the conditions specified in the Spatial Planning Act. Otherwise, the governor is obliged to grant it within 14 days from the date of the application for its expression. This deadline is a statutory deadline. Since the procedure for preparing the draft Local Plan or its amendment is not an administrative procedure, it is not possible to undertake such actions as, for example, a request to supplement the deficiencies. Failure by the body to present a position within the aforementioned deadline is considered equivalent to granting the aforementioned consent. The deadline for making agreements or presenting an opinion is 14 days from the date of the application for the aforementioned agreement or presenting an opinion. The legislator also allowed the limitation of the forms of public consultations to collecting comments and conducting public consultations for a period of at least 14 days.[15]

[15] See: R. Dubieszko, J. Antepowicz, *Nowelizacja ustawy o planowaniu i zagospodarowaniu przestrzennym oraz jej wpływ na realizację inwestycji w odnawialne źródła energii – wybrane zagadnienia oraz ich ocena*, "Palestra" 11 (2023), p. 29.

4. CONSTRUCTION

Subsequently, when planning an investment in the RES installation in Poland, legal requirements regarding construction shall be analyzed. In principle, such regulations are contained in the aforementioned Construction Law.

At the outset it is worth pointing out that as a rule, under art. 28 item 1 of the Construction Law, any construction work can only commence on the basis of a building permit. A legal definition of a notion "building permit" is contained in art. 3 point 12 of the Construction Law, which sets forth that a building permit is an administrative decision authorizing commencement and carrying out construction or construction work other than the construction of a building. It shall also be noted that in the light of art. 3 point 7 of the Construction Law, notion "construction works" is understood as construction, reconstruction, assembly, renovation or demolition of a structure.[16]

However, the Construction Law provides for exceptions to the principle of commencing and carrying out construction work on the basis of a building permit. In principle, such exceptions are listed in art. 29 of the Construction Law. Basically, they concern situations in which construction may be commenced on the basis of a notification of the intention to commence specific construction works to a competent administration authority as well as in which construction work does not require a building permit nor a notification.

For instance, with regard to the installation of photovoltaic devices with an installed electrical capacity of no more than 150 kW[17], generally it is regarded as work requiring neither a notification nor a building permit. It shall be noted however that the Construction Law contains exceptions to the above principle. A building permit will be required if the installation is performed on a building site entered in the register of historic monuments or a notification shall be required for works performed in the area entered in the register of historic monuments.

All other RES installations will require a building permit. Consequently, the construction of a small RES installation with a capacity exceeding 150 kW

[16] See also: judgment of the Voivodship Administrative Court in Cracow dated October 8, 2018, ref. no: II SAB/Kr 22/18; D. Sypniewski, R. Godlewski, M. Goss, J. Góralski, *Komentarz do art. 3*, [in:] *Prawo budowlane. Komentarz*, ed. D. Sypniewski, Warsaw 2022, p. 48; A. Kornecka, J. Kornecki, G. Kuźma, *Komentarz do art. 3*, [in:] *Prawo budowlane. Komentarz*, ed. D. Okolski, Warsaw 2024, thesis 13.

[17] With the proviso that for photovoltaic devices with an installed electrical power of more than 6.5 kW, the obligation to agree with a fire protection expert with regard to compliance with fire protection requirements, the design of these devices and to notify the authorities of the State Fire Service shall apply – see. art. 29 item 4 point 3) letter c) of the Construction Law.

will require a building permit, irrespective of whether the RES installation is installed on the ground or on a building.

From the practical standpoint it is important to stress that in accordance with art. 37 item 1 of the Construction Law, commencement of works based on a building permit must take place within 3 years from the date on which the permit became final. The regulations also allow for a break in commenced construction, but not for longer than 3 years.[18]

In the case of extension of existing micro RES installation into a small RES installation a building permit should also be obtained due to the fact that it is not allowed to slice the construction into stages in order to circumvent the requirement of having to obtain a building permit. Also, if the micro RES installation to be extended was constructed based on a zoning permit – depending on its content, in particular designation of electrical capacity – amendment of the zoning permit may be required prior to obtaining a building permit for the extension. In the case a zoning permit was not required for the construction of installation before the extension – it should be required for purposes of such extension prior to obtaining a building permit unless the premises are located in the area covered with LZP.

5. GRID CONNECTION AND LICENSING

Notwithstanding the above-described selected obligations stemming from the Polish regulation, in the context of potential investments in RES installations attention shall be drawn to the issue of a grid connection as well as licensing.

As to the former, in principle the EL indicates two modes for the connection of a micro-installation. Firstly, an entity may apply for the connection of a micro installation on the basis of a notification filed with a competent distribution system operator (hereinafter: "DSO") to whose grid it is to be connected if the installed capacity of the micro installation is no higher than the connection capacity of interconnection constructed for the purpose of consumption of electricity and if it is connected to the distribution network as a final consumer. The DSO shall be obliged to connect a micro installation to the grid on the basis of a notification within 30 days of the submission of the notification. Secondly, connection through the submission of an application for the connection conditions. It shall be noted that when applying for the connection of a micro installation by submitting an application for the definition of the connection conditions, in the event that

[18] See: A. Kosicki, *Komentarz do art. 37*, [in:] *Prawo budowlane. Komentarz aktualizowany*, eds. A. Plucińska-Filipowicz, M. Wierzbowski, Warsaw 2023, p. 523-524.

the installed capacity of the micro installation is higher than the connection capacity of interconnection constructed for the purpose of consumption of electricity or the premises are not connected to the grid.[19]

With regard to small RES installations, they shall be connected to the grid on the basis of an application for the connection conditions and the conclusion of a connection agreement. In principle, a fee shall be paid for the connection to the grid which is calculated based on actual costs of connection incurred by DSO. The fee for connection to the grid and the deadline for the issuance of the connection conditions depend on the type and voltage of the grid to which the producer is connected. In the case of the connection of a small installation to a grid with a rated voltage higher than 1 kV and not higher than 110 kV, the connection fee will amount to half of the actual costs incurred for the connection. Generally, the DSO is obliged to issue or refuse to issue connection conditions within 120 days from the date of application. Importantly, under art. 7 item 1 of the EL, RES installations have priority in connection to the grid however due to their instability and the condition of grid which often are very old and require extension in practice connecting RES installations may face difficulties.[20]

According to art. 7 item 8i of the EL, connection conditions are valid for two years from the date of their receipt. During the validity period, the connection conditions shall constitute a conditional obligation on the DSO to conclude a connection agreement. Signing of the connection agreement is the basis for starting the investment process which will result in connecting the facility to the grid.

Consequently, micro installations require connection to the grid which takes place either by way of a notification to DSO, if an entity wishing to connect it to the grid has already been connected to the grid as in its role as final consumer and the capacity of the micro installation to be connected does not exceed the capacity of an interconnection purposed of electricity consumption, or by way of applying to DSO for connection conditions if the situation with the capacity is opposite. In the case of small installations a standard connection to a grid applies and obtaining connection conditions is always necessary.

As for other RES installations, i.e. installations with a total installed capacity exceeding 1 MW, they shall be connected to the grid on the basis of an application

[19] See: Ł. Jankowski, M. Czarnecka, T. Ogłódek, G. Zych, *Komentarz do art. 7*, [in:] *Prawo energetyczne. Efektywność energetyczna. Tom I. Komentarz*, eds. M. Czarnecka, T. Ogłódek, Warsaw 2023, thesis 8.

[20] See: Z. Muras, M. Nowaczek-Zaremba, D. Nowak, P. Orzech, *Komentarz do art. 7*, [in:] *Prawo energetyczne. Tom I. Komentarz do art. 1-11s*, eds. Z. Muras, M. Swora, Warsaw 2016, p. 857-858.

for the connection conditions and the conclusion of a connection agreement. Basically, rules concerning connection of other photovoltaic installations are similar to rules regarding small installations.

Connection to the grid of other RES installations is subject to a connection fee which is dependent on a total installed capacity of a given installation. In the case of connection of other photovoltaic installation of total installed capacity up to 5 MW, the connection fee will amount to half of the actual costs incurred for the connection. Furthermore, in the case of the connection of other photovoltaic installation of total installed capacity exceeding 5 MW, the connection fee will amount to the actual costs *in extenso* incurred for the connection. Similarly as in case of small installations, DSO is obliged to issue or refuse to issue connection conditions within 120 days from the date of application.

With regard to operation of RES installations, as a general rule, the commencement and conducting of a business activity consisting in generating electricity from RES shall be subject to a generation license, with the exception of the generation of electricity in a micro installation as well as in a small installation. Even though the majority of provisions regulating the premises, requirements and rules concerning granting the license are contained in the EL, important regulations are also set forth in the RES Act, specifically art. 3 thereof. In the case of a micro installation, the producer is obliged to notify, in an appropriate application, the readiness of the installation for generation and the intention to start operation to a DSO to which it is connected, which informs the President of Energy Regulatory Office about the given micro-installation connected to its grid.[21]

Conducting business activity consisting in generation of electricity in small installations is a regulated activity. The producer is obliged to apply to the Energy Regulatory Office for an entry in the Register of Producers of Electricity in Small Renewable Energy Installations. The President of the Energy Regulatory Office makes an entry of the producer to the Register of Producers of Electricity in Small Renewable Energy Installations within 21 days of the date of receipt of the application.

As set forth in art. 11a item 1 and 2 of the RES Act, if the President of the Energy Regulatory Office does not make an entry within this period and 28 days have elapsed from the day on which the application was received, the producer may commence its activity. A certificate of entry in the register is issued *ex officio*. Both in the case of micro and small installations one entity may have an unlimited number of installations regardless of the total installed capacity of those installations. However in the case there is an extension of the installation from

[21] See: M. Karpiński, *Komentarz do art. 3*, [in:] *Ustawa o odnawialnych źródłach energii. Tom II. Komentarz*, eds. M. Czarnecka, T. Ogłódek, Warsaw 2023, thesis 6.

micro to small the producer should properly reflect it in the register and update information contained therein.[22]

In the view of the foregoing it shall be emphasized that commencement and conducting of a business activity of generating electricity from other RES installations shall be subject to a generation license. Such a license is issued by the President of the Energy Regulatory Office upon an application submitted by an entity before starting a business activity of generating electricity from other photovoltaic installations. The application shall contain documents indicating that formal, legal and organizational conditions are met (such as, *inter alia*, articles of association of a company, list of members of the company's bodies etc.). Also, documents indicating that the technical conditions ensuring the proper conduct of business activities are met (such as, *inter alia*, documents confirming the entrepreneur's legal title to the facilities and installations necessary to conduct the business covered by the license, the description of the technical parameters of devices used to generate electricity specifying the type of fuel used and the technical condition of these devices, a building permit etc.) shall be attached to the application. Furthermore, it is required to provide documents confirming that applicant has the financial resources to ensure the proper performance of planned business or that he has the ability to obtain them (such as, *inter alia,* a statement of annual planned revenues and costs for the activities covered by the license application, for a period of at least three years, financial statements for the last three years – or from the begging of conducting business activity, if such period does not exceed three years, a certificate from the bank where the applicant's basic account is kept etc.). In principle, the license shall be issued within 30 days from the date of submitting complete application. If the submitted application is not complete, the President of the Energy Regulatory Office shall call the applicant to submit additional documents or provide additional information. In practice, such proceedings last for a few months. The license is issued for a fixed period of time, in principle from 10 to 50 years.

CONCLUSION

Planning an investment concerning RES installations in Poland is inevitably linked with several obligations stemming from public law provisions. As presented

[22] See: A. Mituś, *Komentarz do art. 11a*, [in:] *Odnawialne źródła energii. Komentarz*, eds. A. Mituś, A. Piotrowska, Warsaw 2024, p. 108; M. Karpiński, *Komentarz do art. 3*, [in:] *Ustawa o odnawialnych źródłach energii. Tom II. Komentarz*, eds. M. Czarnecka, T. Ogłódek, Warsaw 2023, thesis 6.

in the above analysis, typically, the investment and construction process for RES installations includes obligation to obtain the environmental decision, the zoning permit, building permit or notification to the building authorities as well as the occupancy permit. However actual requirements vary depending on the capacity of the installation and localization conditions in a given area. Thus, it is reasonable to identify all legal requirements connected to potential investment *in concreto*.

It is particularly important to pay due attention that on 7 July 2023, the Spatial Planning Act was significantly amended and according to new regulations, photovoltaic installations located on agricultural land of classes I-III and forestry land, on agricultural land of class IV, with an installed electrical capacity of more than 150 kW or used for the business of generating electricity as well as on land other than that indicated above, with an installed electrical capacity of more than 1,000 kW, may only be built on the basis of the provisions of the LZP.

Nonetheless, in principle the rationale behind enacted amendments aimed at simplifying, unifying and accelerating planning procedures deserves a positive assessment. One of the most important amendment concerns the introduction of a Local Plan as a mandatory and legally binding planning document covering the entire area of the commune. However, it is doubtful whether communes will be able to adopt such Local Plans by the end of the envisaged deadline, i.e. by the end of 2025. Its introduction is mandatory for communes by the end of 2025. There are numerous, seemingly justified doubts, which undermine that the aforementioned deadline will be insufficient for communes to implement the above obligation.

Despite the fact that the general direction of the described changes deserves a positive assessment, it seems, that at least in the short term the new spatial planning rules may have a negative impact on the development of the RES sector in Poland. The possibility of locating renewable energy installations, as a rule, solely on the basis of Local Plans, may have negative impact on the development of renewable energy. Consequently, chances are that it will significantly prolong the process of transforming the Polish energy sector and will also weaken the level of energy security.

Furthermore, the new regulations related to roof-mounted RES installations should also be assessed positively. It is justified to assert that the concept of a Local Plan that by default allows for their implementation on buildings will contribute significantly to the dissemination of this type of investment.

Also, it seems that the possibility of applying a simplified procedure for the adoption of a Local Plan may accelerate the investment process in RES installations.

De lege ferenda, it should be postulated that in subsequent amendments concerning spatial planning and land development issues, the procedures for

the construction of RES installations should be simplified, and consequently contribute significantly to the further development of RES in Poland. It seems worth considering whether to introduce appropriate provisions concerning, among others, wind farms in subsequent amendments. The natural direction of development of procedures related to RES investments, or more broadly, public administration, should be further focus on the digitalization of all processes required to implement the investment. This will obviously accelerate administrative processes and enable better exchange of information between public authorities. As a rule, it should also be postulated that support systems for RES installations be maintained and developed in the coming years, as they have an impact on increasing the predictability of investments.

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ASPEKTY PRAWNE INWESTYCJI W ODNAWIALNE ŹRÓDŁA ENERGII W POLSCE – WYBRANE ZAGADNIENIA

Streszczenie

Budowa i eksploatacja instalacji odnawialnych źródeł energii (dalej: „OZE") w Polsce jest nieodłącznie związana z obowiązkiem spełnienia określonych wymogów nałożonych przez prawo publiczne, w tym m.in. uzyskania decyzji środowiskowej, pozwolenia na zagospodarowanie przestrzenne, pozwolenia na budowę lub zgłoszenia do organów budowlanych, a także uzyskania pozwolenia na użytkowanie. Jednakże rzeczywiste wymagania różnią się w zależności od mocy instalacji oraz warunków lokalizacyjnych w danym obszarze. Z tego względu zasadne jest identyfikowanie wszystkich wymogów prawnych związanych z potencjalną inwestycją w konkretne przedsięwzięcie. Celem niniejszego artykułu jest przedstawienie aktualnych regulacji wynikających z polskiego prawa, które powinny zostać uwzględnione przy planowaniu procesu inwestycyjnego dotyczącego budowy i dalszej eksploatacji instalacji OZE w Polsce, szczególnie w odniesieniu do mikroinstalacji oraz małych instalacji. Analiza obejmuje kwestie prawne dotyczące postępowania w sprawie wydania decyzji środowiskowej, odpowiednich regulacji wynikających z ustawy z dnia 27 marca 2003 r. o planowaniu przestrzennym i zagospodarowaniu terenu, która w 2023 roku przeszła istotną nowelizację, a także formalności związanych z budową. Artykuł przedstawia również podstawowe zasady dotyczące obowiązków związanych z przyłączeniem do sieci oraz zagadnienia dotyczące licencjonowania.

Słowa kluczowe: odnawialne źródła energii; prawo energetyczne; prawo publiczne