

Legislative Developments in the Energy Industry in 2008

by

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The year 2008 was quite turbulent for the Polish energy sector, particularly so for industrial consumers of electricity. The shifts of 2008 are likely to be reflected by legislative amendments in 2009, seeing as the legislative process needs time to catch up. In 2008, the Energy Law Act of 10 April 1997¹ (hereafter, Energy Act) was subject to amendments deriving primarily from changes to other Polish legal acts and from the introduction of new rules associated with the implementation of EU laws.

The first set of amendments to the Energy Act entered into force on 1 January 2008 on the basis of the Act of 12 January 2007 on the amendment of the Energy Law Act, the Environmental Protection Law Act and the Conformance Evaluation System Act². The amendment related to Article 23(2)(18a) of the Energy Act concerning the authority of the President of the Polish Energy Regulation Office (URE): “The scope of the URE President’s activities includes: (...) the collection and processing of information on energy producers, including the calculation and announcement by 31 March of each year of: a) average prices of electrical power produced through highly efficient co-generation that are calculated separately for electrical power produced in co-generation units, as noted in Article 9l(1)(1) and (2)”. Until 1 January 2008, point 18a read: “[t]he average price of electrical power produced in association with the production of heat.” This amendment is associated with the introduction into the Polish legal order of a system of certificates of origin concerning electricity produced from highly efficient co-generation. Such certificates are issued separately for electricity produced in a „co-generation

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¹ Consolidated text: Journal of Laws 2006 No. 89, item 625, with subsequent amendments.

² Journal of Laws 2007 No. 21, item 124.

unit fired by biogas fuels or with a total force of installed electrical source below 1 MW” and electricity produced from other sources.

Another set of amendments to the Energy Act entered into force on 25 October 2008 on the basis of the Act of 5 September 2008 on the amendment of certain laws in connection with the entry into force of the Protocol to the Agreement between the European Community together with its Member States and the Swiss Confederation on the free movement of persons³. This amendment expands the ability to file a motion to grant a power concession to entities based in or residing in Switzerland. As of 25 October 2008, Article 33(1)(1) of the Polish Energy Act states that: „The URE President grants a concession to an applicant, who: 1) is based or resides in the territory of a European Union member state, the Swiss Confederation or a member of the European Free Trade Area (EFTA) – parties to the European Economic Area agreement”.

Further legislative developments affecting the Polish energy sector took the form of executive regulations. On 14 August 2008, the Minister of Economy issued a new executive regulation concerning Article 9a(9) of the Energy Act⁴. In comparison to its predecessor issued in 2005, Article 4.2 of the new executive regulation contains an expanded range of sources for the production of renewable energy with „[a] part of energy obtained from thermal transformation of municipal waste” in accordance with the Waste Act of 27 April 2001⁵. The amendment is intended to increase the ability to obtain renewable energy, facilitating the achievement of the required renewable energy share in Poland’s general balance of energy production, in accordance with EU instructions. The new executive regulation is also meant to increase the percentage of biogas and biomass utilised in the incineration process as well as to increase power produced from these sources. In this manner, it helps solve the problem of low power productivity of renewable energy sources based on biomass incineration. Finally, the executive regulation increases the weight share of biomass in the total mass utilised in the incineration process from 5% (in 2008 and 2009) to 15% annually (subsequent years), so as to reach 100% in 2015. The threshold of production power was also raised from 5 MW to 20 MW.

³ Journal of Laws 2008 No. 180, item 1112.

⁴ Executive Regulation of the Minister of Economy of 14 August 2008 on the detailed scope of duties for receipt and presentation for discontinuance of certificates of origin, payment of substitute fee, purchase of electrical power and heat generated from renewable energy sources as well as the obligation to confirm data concerning the amount of electrical power produced from renewable energy sources (Journal of Laws 2008 No. 156, item 969).

⁵ Journal of Laws 2007 No. 39, item 251, with subsequent amendments.

On 7 May 2008, the Minister of Economy issued an executive regulation concerning Article 16a(8) of the Energy Act on the basis of a statutory delegation introduced into the Energy Act as early as 2005. According to the Energy Act, the URE President organises and conducts a tender for the construction of new electrical power production capabilities or the undertaking of projects aimed at reducing electricity needs. The new executive regulation⁶ specifies the terms for the organisation and conduct of a tender in this respect, including detailed requirements concerning its documentation as well as the appointment procedure and activities of the tender commission. The earlier lack of an executive regulation in this regard undoubtedly constituted a legislative loophole in this field.

Following from the above it can be said that the number and scope of amendments of the Energy Act was not great in 2008. The Minister of Economy announced however more extensive amendments for 2009. They will be primarily meant to strengthen the security of electricity supplies and aim to improve the functioning of Polish energy markets. Further legislative work is to deal with a draft new Energy Act.

⁶ Journal of Laws 2008 No. 90, item 548.