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PROPOSED LEGISLATION ON RENEWABLE ENERGY

On December 22, 2011, the Polish Ministry for the Economy published proposal for a new set of rules aimed at regulating the energy sector.

The proposal of the Polish legislator is intended to legally implement the Climate and Third Energy Package (Directives 2009/28/EC; 2009/72/EC y 2009/73/EC) proclaimed by the European Union, replacing the current Energy Law of 1997 (and its amendments) with three new laws each of which addresses the following subjects:

- Energy Law
- Gas Law
- Law governing Energy from Renewable Sources (resources).

The Polish Government's intention is that the new regulation will be in force as from July 1, 2012 although beforehand it must undergo the procedure of public consultations and the approval by each of the ministries affected by the legislation and, finally, parliamentary ratification (Semj).

Subject to the further legislative implementation which may occur in the coming months and on which we will promptly report, an analysis is performed below of the principal modifications which could particularly affect investments relating to renewable energy sector which, in the case of Poland focus on wind, biomass and low-power hydro power plants.

1. REGULATION IN FORCE IN RELATION TO RENEWABLE ENERGY

Polish legislation in force for this type of installations is covered by the current Energy Law of 1997 and is completed by its successive amendments, particularly, those of the years 2004, 2005, 2006 and 2008.

The regulation applicable is characterized by the following conditions:

- Obligation of the supply companies to acquire all renewable energy that is produced regardless of the technology of origin.

- Obligation set for percentage of renewable energy in the total energy supplied for consumption (10.4% for the years 2011 and 2012).
- Remuneration for the producers of energy derived from renewable sources by granting the Green Certificates
- Substitute levy obligation if the supply company does not prove the acquisition of green certificates or not produce green energy itself.

2. DRAFT OF THE LAW GOVERNING ENERGY FROM RENEWABLE SOURCES

The draft of the Law governing Energy from Renewable Sources from the end of 2011 is intended to maintain the existing support scheme, it includes some modifications and for this purpose bases its new proposal on the following principles:

- Different remuneration depending on each type of technology.
- Priority is given to technological development.
- Obsolete and/or depreciated installations will not benefit from the support of the system.
- The development of microinstallations is promoted.

However, four new aspects have been incorporated which, if ultimately approved, could have a direct impact on the investment model developed to date.

Such modifications are:

- Elimination of the purchase obligation set for the supply companies to acquire the energy derived from renewable sources.

The new regulation limits such obligation only in relation to microinstallations (i.e. those with power of up to 40 kW). On the one hand, this decision seems to be aimed at promoting low-power installations but, on the other hand, it gives great negotiating and advantage for large Polish electricity supply companies which, in this situation, will be able to unilaterally decide on their purchases of green energy, which may lead to a toughening of the conditions of the power purchase agreements (PPA).

- Corrective coefficients linked to the technology and power output of the installations. In order to promote or encourage less-developed technologies, the draft Law introduces a series of principles whereby the Minister of Economy, by Decree, have to impose certain corrective coefficients on production.

This means that the Green Certificates (their value) to be received by each producer will be the result of multiplying the volume of energy produced by the relevant corrective coefficient.

The proposed Law does not include the applicable coefficients, but only establishes a series of principles on the basis of which the Ministry for the Economy must set them. Those are namely the cost of generating the energy, the general energy policies which are adopted by the Polish Government and the evolution and development of each of the technologies which are applicable.

Subject to the foregoing, at the press conference at which the Ministry for the Economy presented the drafts of the legislation, it was pointed out that, for example, for wind energy the following coefficients were considered for three different categories:

- Onshore installations with installed power of up to 200 kW coefficient 1.
- Onshore installations with installed power exceeding 200 kW coefficient 0.75.
- Offshore installations coefficient 1.3.

The initial reactions to this proposal have been most unfavorable, since they penalize projects that are currently the biggest installations built in Poland: wind farms. In addition, during the public consultation of the draft that is being conducted, it has been detected that the information on which the Minister of Economy sets coefficients (information provided by the promoters of wind farms for the obtainment of subsidies) does not coincide with the reality of the sector. This leads one to believe that in the future drafts of the Law and, to be specific, of its regulatory Decree, the discussed coefficients will be corrected.

- Any Green Certificates which are issued to a source of production of renewable energy will be valid for a term of 15 years from the start-up of the installation.
- The substitution levy will be linked to the average price of electricity set by the Polish Energy Regulatory Authority (URE). The levy will be the result of deducting from fixed amount of 470 PLN¹ the average price set for electricity by the URE.

Finally, it should be emphasized that according to the draft Law, the new legislation would be applicable only to installations which came into operation after the entry into force of the legislation, although the text itself recognizes that it would also be applicable to projects which are in operation beforehand, but in this case, only in relation to the period of validity of the green certificates, which would be 15 years from the issue of the first green certificate.

¹ As of February 10, 2011 the Euro exchange rate is 111.9 euros (Exchange rate applied 1 euro 4.2 PLN).

3. INITIAL ASSESSMENT OF THE LEGISLATIVE PROPOSAL

Although the process of approval of the legislation is at a very early stage and, at least according to the administration, it will be necessary to wait for six months to ascertain its final content, there are differing opinions in the sector regarding its effectiveness and content.

Initially it seems that the large energy suppliers are reinforced, since the elimination of the obligation to purchase all renewable energy allows them to negotiate with greater flexibility with producers of renewable energy.

Furthermore, and this is one of the intentions expressly declared by the Polish Government, this proposal is intended to favor the real investors in the sector, by trying to eliminate speculators without a real interest in developing investments.

However, it should also be pointed out that the current projects, both those that are at the stage of acquisition of permits and of negotiation for the execution of the PPAs, and those which are with finance pending, enter a period of uncertainty until the new regulatory framework is exactly determined. Such framework, if it turns out to be as proposed by the draft, may make them less profitable than they were up to now.

In conclusion, the repercussion which the new regulation may have for the sector and future and current projects will largely depend on the final result of the drafts and, in particular, on the conditions relating to the obligation to purchase energy derived from renewable sources as well as the corrective coefficients.

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