

## A POTENTIAL BLOW FOR WIND POWER IN POLAND

A recent bill on wind power plant investments, sponsored by MPs of the Law and Justice party, is very controversial to say the least. In its current wording, the proposal will certainly decrease both the feasibility and profitability of wind power plant investments in Poland. Investors in this sector are particularly disappointed with the minimum distance restrictions, the increased real estate tax burden, the significant costs of obtaining and renewing the new operational permit and the zoning requirements.

### FEASIBILITY

The bill proposes that the distance between new wind power plants and residential areas, protected areas and forest areas must be at least ten times the height of the turbine. In practice, this means that new wind power plants will need to be located approximately 1.5-2 km from these areas. This proposal is not as extreme as a previous bill submitted by the Law and Justice party which had set the minimum distance of at least 3 km. Nonetheless, it is still a very severe proposal for the wind power sector when compared to other EU countries which either do not have such restrictions or have less restrictive non-binding guidelines (e.g., four times the height of the wind turbine in Belgium, 300-1,000 meters in Germany, and 500-1,000 meters in Spain).

Additionally, if the proposal stands it will only be possible to build wind power plants (with the exception of micro-installations) in areas designated for this purpose in the local zoning plans. This will mean that wind power plants will only be erected in areas which have adopted a local zoning plan. This would be fine if most of the Polish territory was in fact covered by local zoning plans, but this is not the case.

### PROFITABILITY

Adoption of the bill will also result in wind farm developers being subjected to a higher real estate tax. At present, this tax is imposed only on the value of the tower and the foundations but not the technical structures. Under the bill these technical structures will no longer be exempt from the real estate tax as the new definition of a wind power plant would include them.

The bill also adds the regulatory requirement of obtaining an additional operational permit (in addition to the occupancy permit) prior to the commencement of operations of a new wind power plant occurring within one year of the legislation coming into force. The operational permits will need to be renewed every two years as well as following repairs or modernizations. The Technical Supervisory Authority will issue and renew these permits following a review of technical documentation, assessment of its compliance with the factual situation, and participation of the authority in relevant start-up tests. The fees to be charged by the Technical Supervisory Authority for the issuance

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and renewal of operational permits will be established in secondary legislation subject to a statutory maximum of 1% of the value of the wind power plant investment. This statutory maximum will be the applicable fee until the secondary legislation is implemented.

Given the strong industry opposition to this draft bill, we expect some of these controversial provisions to be watered down during the legislative process. Hopefully, the final version of the law will not mean that investments in the Polish wind energy sector will be gone with the wind!

### About WOLF THEISS

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