

**PRESS RELEASE****LIBERALIZATION OF THE 10H RULE AS A CHANCE TO UNBLOCK ONSHORE WIND FARM POTENTIAL IN POLAND**

**Warsaw, 10 June 2020 – The RES industry is waiting for a change of the 10h rule, which requires wind farms to maintain a distance of not less than ten times its height (10h) from residential buildings. Konrad Kosicki, who heads the Energy Team in the Warsaw office of Wolf Theiss, believes the rule may be liberalized later this year, and the change should accelerate the ruling of the Court of Justice of the European Union ("CJEU") in this case.**

Wolf Theiss periodically publishes industry studies covering the Central and South-Eastern European (CEE/SEE) markets in which it operates. Lawyers from as many as 12 jurisdictions participated in the preparation of the latest guide entitled, "Generating Electricity from Renewable Sources in Central, Eastern & Southeastern Europe"<sup>1</sup>. In the chapter about the Polish market, attention was drawn to, among others, the expected and desired liberalization of the Act on Wind Power Plant Investments (hereinafter referred to as the "Act"), which has been in force for 4 years and introduced the 10h rule.

„The proximity rules have prevented new projects, specifically those seeking building permits after 2016, from being implemented. The strict regulations have made it practically impossible to fulfil all criteria that would make wind farms viable. This has led to unintended and inefficient changes in RES development. New solar projects are being planned all the time, including large scale ones, which is obviously welcome, but new wind projects are missing. I share the industry's expectations regarding the liberalization of this controversial principle,” said Konrad Kosicki.

Recently, the CJEU issued a ruling which lays the groundwork to question the 10h rule, provided that the Polish court assesses, taking into account the necessity and proportionality of the regulation, whether the Act has directly affected the slowdown of wind energy development in Poland<sup>2</sup>. Thus, the CJEU resolved three questions posed by the Provincial Administrative Court in Kielce in 2017 for a preliminary ruling: are the local regulations of a technical nature, and if so they should be properly justified and notified to the European Commission, do they constitute a territorial limitation of the distance between service providers, and do they violate the Directive on the promotion of the use of energy from renewable sources. The RES industry expects that the CJEU judgment will prove to be an impulse for change. These forecasts are also confirmed by the Ministry of Development's announcement of a tender for the preparation of a report, as well as advisory and consulting services, in terms of determining the degree of impact

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<sup>1</sup><https://www.wolftheiss.com/knowledge/wolf-theiss-guides/detail/the-wolf-theiss-guide-to-generating-electricity-from-renewable-sources-in-central-eastern-southe/>

<sup>2</sup><https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:62017CJ0727>

of wind power plants on people and the conditions of their location in the vicinity of residential buildings<sup>3</sup>.

"Poland is the undisputed leader in the region in terms of installed capacity in wind farms. Given the current wave of investments in these sources, which were auctioned in 2018 and 2019, the strong position will be further strengthened. Nevertheless, to maintain this trend, the Polish authorities will have to liberalize the controversial 10h rule, which is the main factor holding back the development of further wind projects," concludes Kosicki.

As noted in Wolf Theiss' latest study on RES, a liberalization of regulations was announced by Slovenia this year, which, similarly to Poland, has restrictions on the location of new wind investments. "There is currently uncertainty about wind energy projects in Slovenia. The construction of new turbines is being held up due to environmental concerns and low public acceptance of these projects. In general, there are only a limited number of locations with suitable wind conditions where the deployment of wind turbines is allowed according to still valid regulations," states the Wolf Theiss guide.

In Slovenia, however, work is already underway to amend the noise pollution legislation for wind farms by regulating the limit values or distance of wind farms from the closest buildings, thus increasing the use of wind energy. Other countries, according to the study by Wolf Theiss, are focused on supporting the wind industry to a different extent, but avoiding such rigid regulatory solutions as those currently in place in Poland and Slovenia.

## ABOUT WOLF THEISS

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 offices located in Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia and Ukraine, Wolf Theiss represents local and international industrial, trade and service companies, as well as banks and insurance companies. Combining law and business, Wolf Theiss develops comprehensive and constructive solutions on the basis of legal, fiscal and business know-how.

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<sup>3</sup> <https://www.cire.pl/item,199220,1,0,0,0,0,ministerstwo-rozwoju-zbada-czy-ustawa-odleglosciowa-jest-uzasadniona.html>