

Full of power, full of doubts

Energy storage facilities are becoming increasingly popular among investors. However, legal regulations in this area remain scattered and full of loopholes. Investors struggle with the lack of clear rules, navigating between construction, energy and environmental law, while administrative authorities apply different interpretations, using regulations concerning industrial or storage buildings. The lack of clear regulations means uncertainty for investors as to what formalities need to be completed.

The principle under construction law is that a new investment requires a building permit. Certain categories of investments are exempt from this obligation, for which the law requires only notification or does not provide for any formalities at all. Construction law currently does not recognise the concept of an "energy storage facility". Thus, it is not possible to clearly assign this type of investment to the category of those exempt from the obligation to obtain a permit. For the time being, even official government sources of information state that the practice of administrative authorities in this regard varies, and the planned changes are intended to standardise this practice.

Against this background, it should be viewed positively that the legislator has finally recognised the need to regulate this issue by working on amendments to the construction law and to the regulations on the technical conditions to be met by buildings and their location. This is only the first step (work is ongoing in parliamentary committees), but it may pave the way for a more coherent and predictable regulatory system for this type of investment. Unfortunately, the planned regulations are laconic, and questions arise, for example, regarding the installation of energy storage facilities in rooms intended for human occupancy.

The draft amendment to the building law is intended not only to introduce the definition of "energy storage facilities" into the act, but also to clarify that energy storage facilities with a capacity exceeding 20 kWh will be treated as facilities requiring a building permit. However, this would mean that even relatively small installations would be subject to the full building procedure without any doubt.

After the planned changes, the relationship between the provisions of broadly understood energy law and building regulations will remain interesting. The Renewable Energy Sources Act classifies installations as micro and small, where micro-installations are installations with a total installed electrical capacity of no more than 50 kW, while the total capacity of small installations is greater than 50 kW but no greater than 1 MW. The 20kWh threshold to be introduced under construction law therefore disregards the existing classification of installations by capacity under these regulations.

And what do environmental regulations say about energy storage facilities? It is futile to look for such a concept in the regulation on projects that may have a significant impact on the environment, which specifies for which projects an environmental impact assessment and an environmental decision are required. This regulation does not provide for energy storage facilities as a separate category of projects. Investors and administrative authorities are forced to use analogies – most often, following the recommendations of government portals, by classifying them as industrial and storage facilities. This approach may raise doubts. From a construction point of view, an energy storage facility is far from a warehouse or logistics centre. We are talking more about batteries, although of course much larger than the AA ones. As in the case of a "normal" warehouse, the building area will therefore be decisive for classification. The lack of separate regulations causes uncertainty and discrepancies in practice.

From the investors' perspective, it is good that the issue of energy storage facilities has finally made it onto the legislator's agenda. The planned amendment to the building law and changes in technical conditions are a step forward, but the problem of inconsistency with other branches of regulation remains. Some of them do not yet recognise that not all storage facilities are created equal.

Do you want to know more? Contact us!

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