

Energy vs Environment – 1:0

The regulations regarding undertakings that can significantly impact the environment (Regulation of the Council of Ministers of 10 August 2023 amending the Regulation of the Council of Ministers of 10 September 2019) have changed since 13 September. This change may affect the processes for investing in photovoltaic installations. Previously, an environmental conditions decision was needed for investments covering 1 hectare, but now it's required only for areas exceeding 2 hectares. For areas under nature protection, decisions are still necessary for investments over 0.5 hectares.

It has been clarified how to determine the area of development of photovoltaic systems, which determines whether a given project will constitute a project with a potentially significant impact on the environment, and consequently whether it will require an environmental conditions decision. The area conditioning this obligation is designated along the contour of the external outermost modules of the panels.

What is also important, the new regulations specify that an environmental conditions decision is not required for investments in photovoltaic systems located on roofs and facades of buildings.

According to the authors of this amendment, the introduction of the aforementioned changes should result in a simplification of the investment process, reduction in the time required by investors to obtain the necessary permits, increase in the rate of development of renewable energy sources and achievement of an appropriate level of energy produced from renewable sources in the overall energy balances of the country. This means that the reduction of legal and administrative obligations is intended to accelerate the substitution of conventional energy sources by renewable sources.

It may additionally be mentioned that the same amendment changed the requirements regarding the necessity to obtain an environmental conditions decision for the construction of, inter alia, garages, car parks or car park complexes. For such facilities, the usable area determining the requirement for obtaining a decision was increased from 0.2 ha to 0.5 ha for areas covered by forms of nature conservation and from 0.5 ha to 1.0 ha for other areas.

The changes which we talk about will probably reduce the number of requests for environmental conditions decisions, which may result in the increase of effectiveness of the authorities in terms of timeframes for their issuance, while maintaining a high level of substantive verification. It may also decrease the number of violations aimed at "bypassing" the requirements for obtaining an environmental conditions decision, like the "salami slicing" (fictitious splitting of the investment into smaller projects, which individually do not exceed the limits of the requirement for obtaining a decision).

The entirety of the changes described above can also be seen as a kind of incentive for investors and promotion of the establishment of renewable energy installations, in the context of the European Commission's REPowerUE communication and the proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, which indicate the need to recognize investments in renewable energy sources as an overarching public purpose investment.

Do you want to know more? Contact us!

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