

## Extra - IUSLETTER ON ENVIRONMENTAL LAW

With the EU accession of Poland on 1 May 2004, Poland has in principle also assumed EU environmental law. To comply with the new regulations, the World Bank has estimated that an investment volume of about € 40 bn. will be required in the next 10 years whereby the capital investment needs of Polish communities and voyvods will benefit from substantial EU subsidies for this purpose. Since in addition, environmental companies in the old EU states, in particular in Germany, have substantial experience in environmental matters, this segment is considered to be the economically most attractive for non-Polish investors and service providers in coming years. To allow our readers to share in this market, this issue of Iusletter deals specifically with the programs of the waste disposal and waste water industries and the Law on Renewable Energy. If any questions remain at your end, please do not hesitate to contact us under [berlin@zanthier.de](mailto:berlin@zanthier.de) or [poznan@zanthier.pl](mailto:poznan@zanthier.pl).

We wish you interesting reading.

The editorial team of  
von Zanthier & Schulz, Berlin and  
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## The Waste Disposal Industry in Poland

Caused among others by the need to meet EU directives in matters of waste disposal, the Polish Ministry of the Environment adopted a concept in November 2004 to deal with the waste disposal system in Poland (Concepcja systemu gospodarki odpadami w Polsce).

In line with the above proposal, the communities assume the responsibility for municipal waste disposal and the duty to install a collection system that meets legal standards and covers 100 % of the inhabitants of a community. This also obligates a community to introduce a system for waste separation and disposal, possibly in cooperation with free enterprise in the field of recycling packaging or hazardous waste. As part of building a waste separation system, the inhabitants of the communities are required under a corresponding municipal resolution to separate waste and deposit it at the respective collection points. The disposal of municipal waste by the community in turn is free of charge.

As part of its tasks, the communities will be required under this concept to ensure the installation, emptying and removal of waste bins on a contract basis in cooperation with free enterprise. Such orders will be awarded as part of a tender.

The voyvod on the other hand will be in charge of establishing and operating the facilities serving to process municipal waste. These tasks may be commissioned by the voyvod under a tender to prequalified private operators.

The project as resolved and the following amendments required for its implementation create new investment opportunities for waste disposal operators in the field of waste recycling and processing. The duties imposed on the communities for the holding of information and training campaigns in waste disposal open up a new field of endeavour for private enterprise, e.g. through the organization of the corresponding training courses

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## **Waste Water Management in Poland**

In spite of the major deadline extensions granted to Poland for the translation of EU requirements into national law in environmental matters, some EU directives have already been absorbed into national legislation.

Thus, the Water Resources Act (Prawo wodne of 18.07.2001, Dz.U. No. 115, poz. 1229 z późn. zm.) in implementation of Directive 91/271/EEG obligates the Minister of the Environment to submit, with a corresponding deadline extension, a "National Program for the Treatment of Municipal Waste Water" to ensure that up to 31 December 2010 all communities with over 15,000 inhabitants and up to 31 December 2015 all communities with 2000 to 15,000 inhabitants have access to a sewer system. The Program must show the necessary measures for the extension and organization of a sewer system and for sewage treatment. Although 99.98 % of the Polish population is connected to the sewer system, only 45 % of communal sewage treatment plants meet EU standards and in 17 % of the communities, there are no sewage treatment facilities of any kind.

The Program foresees a total of 1163 sewage treatment plants to be modernized, extended or newly built by the year 2015 whereby a budget of 11,292 mio. PLN (approx. 2.8 bn. Euro) is earmarked for the works. A large part of this sum is scheduled for construction projects in the years 2003 to 2005 and 2006 to 2010. During these terms, priority is to be given to modernizing sewage treatment plants in communities with over 100,000 inhabitants. (Source: Ministerstwo Środowiska, Krajowy Program Oczyszczania Ścieków Komunalnych)

Under the Law on the Self-Administration of Communities of 8 March 1990 (Ustawa o samorządzie gminnym Dz.U. z 2001r. No. 142, poz. 1591 z późn. zm.), waste water disposal and treatment is the responsibility of the communities who must either perform these works themselves or outsource them to private enterprise by way of public tender. In view of the above figures and the significant order volume, the segment offers specialized operators numerous opportunities for investment.

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## **Amendment of Polish Energy Law**

### **1. Legal Framework**

On 2 April 2004, an amendment to the Energy Law (hereafter EnG) was adopted (Dz. U. 2004 Nr. 91, poz. 875) whereby some clauses are in force already now and other will enter into force on 1 January 2005. The amendment to the law is the result of compliance with Directive 2001/77EG of the European Parliament and Council of 27 September 2001 for the Promotion of Electricity Generation from Renewable Energy Sources on the EU domestic electricity market.

Currently, companies whose business object is the sale of electricity have an obligation to purchase a certain portion of the energy from renewable sources. The corresponding implementing regulations are issued under the Ordinance on the Obligatory Purchase of Energy from Renewable Energy Sources (Dz. U. 2003 Nr. 104 Poz. 971) issued on 30 May 2004.

The purchase obligation is considered to be met if the portion of energy purchased or created from own renewable sources in a ratio to the quantity of electricity supplied for the consumption of final consumers every year is not less than:

- 2.85% in the year 2004,
- 3.1% in the year 2005,
- 3.6% in the year 2006,
- 7.5% as the target for the year 2010.

By imposing a minimum portion of electricity from renewable energy sources for total consumption, the EU requirements are met and are thus fixed for the future. The obligation to purchase electricity from renewable energy sources in the version in force at this time and up to 2 January 2005 will not be affected by the amendment (cp. Art. 9a Subsec. 1 EnG latest version in connection with Art. 5 of the Law on the Amendment of the Energy and Environmental Act).

The purchase price of electricity from renewable energy sources is subject to regulations under a separate ordinance to be promulgated by the Polish Minister of the Economy (Art. 9a Subsec. 6 No. 5 EnG old versions).

## 2. Price Structure

The Ordinance on the Obligatory Purchase of Electricity and Thermal Energy from Renewable Sources of 30 May 2003 (Dz. U. 2003 No. 104, poz. 971) currently in force stipulates that the costs for the purchase of energy from renewable sources must be taken into account by companies when doing their price calculations. Costs in the sense of this Ordinance are e.g. costs resulting from the purchase of energy on an energy exchange or the self-generation of renewable energy.

A fixed purchase price for electricity from renewable energy sources which would commit the companies obligated to purchase this energy is not legally required as is the case in Germany under the Law of Priority for Renewable Energy.

## 3. Public Subsidies

There are possibilities for public subsidies for investments in the area of developing renewable energy sources. Details are regulated by the Ordinance on the Conditions for the Grant of Public Subsidies for Investments in Renewable Energy of 27 April 2004 (Dz. U. No. 189, poz. 1850) in force since 1 May 2004.

Contact Person: Rechtsanwalt (Attorney) Henning von Zanthier, LL.M.

## Decisions by Polish Courts

In recent decisions in business matters among others, the Polish Supreme Court has ruled as follows:

### 1. SN Ruling of 15 September 2004, III PZP 3/04

The creation under a bargaining agreement of less favourable conditions for the purpose of individual workshares and the definition of their value requires the termination of the current employment contract terms also when the remuneration fixed in the new bargaining agreement was not reduced (Art. 241<sup>13</sup> Sec. 2 Labour Code).

### 2. SN Ruling of 26 February 2004 r., V CK 220/03

Creditors who enforce a claim awarded to them under a ruling of a court of the second instance not yet legally final but provisionally enforceable must be prepared to reconstitute the enforced claim.

### **3. SN Ruling of 18 February 2004, V CK 241/03**

If the enforcement proceedings are instituted on an object secured by a lien, the attaching creditor may by way of proceedings apply for the exclusion of this object from enforcement even when the claim secured by the lien is not yet entirely due.

### **4. SN Ruling of 19 March 2004, IV CK 172/03**

The performance of a contractor under a construction contract is divisible.

### **5. SN Ruling of 19 March 2004, IV CK 158/03**

A bank which fails to compare the correspondence of an account no. quoted by a customer with the name quoted on the remittance slip does not act with the necessary professional prudence or in line with the trust afforded it by the customer

## **Law Office News**

The office of our Poznan law firm "Von Zanthier Kancelaria prawnicza" has moved. The **new address** is:

**„von Zanthier Kancelaria prawnicza“ sp. k.  
ul. Garbary 56, 61-758 Poznan.**

The current telephone numbers and e-mail addresses remain unchanged.

1. On Wednesday 15 December 2004, Attorney Henning von Zanthier, LL.M. has lectured as part of an event organized by German Water, regd. Assn., "German tec4Water Länderforum Osteuropa" on the legal and tax aspects of a market positioning in the Polish drinking water and waste water segments with special emphasis on the new Polish Environmental Act. The event was hosted by Stockhausen GmbH in Krefeld on the premises of Degussa AG. For more information, please contact Attorney von Zanthier under [berlin@zanthier.de](mailto:berlin@zanthier.de) or the German Water e.V. under [www.germanwater.de](http://www.germanwater.de).
2. On Tuesday, 7 December 2004 Attorney Thomas Urbanczyk, LL.M. will lecture at the ICC Neubrandenburg in the House of Economy in Szczecin, Poland on the topic "Incorporation and Cooperation". For more information, contact Attorney Thomas Urbanczyk under [berlin@zanthier.de](mailto:berlin@zanthier.de) or the ICC Neubrandenburg under [www.neubrandenburg.ihk.de](http://www.neubrandenburg.ihk.de).

3. The German-Polish Business Talks in Szczecin/Poland hosted by ICC Neubrandenburg will be attended by Attorney Thomas Urbanczyk, LL.M. as the representative of the Law Office von Zanthier & Schulz. The Business Talks are held every first Thursday of the month at the Radisson Hotel in Szczecin and begin at 16.30. For more information, contact Attorney Thomas Urbanczyk under [berlin@zanthier.de](mailto:berlin@zanthier.de) or the ICC Neubrandenburg under [www.neubrandenburg.ihk.de](http://www.neubrandenburg.ihk.de).
4. Attorney Henning von Zanthier, LL.M. attends as the representative of the Law Office "von Zanthier Kancelaria Prawnicza" at the German – Polish Economic Circle in Poznan which is held every second Tuesday in the month at alternating venues. For more information, contact Attorney Henning von Zanthier at [berlin@zanthier.de](mailto:berlin@zanthier.de) or Ms Angelika Menze at [deutscher.wirtschaftskreis.poznan@horyzont.net](mailto:deutscher.wirtschaftskreis.poznan@horyzont.net)

### Current Polish Economic Benchmarks

1. Minimum monthly wage laid down in the Labour Code since 1 January 2004 - **824 PLN gross** (Gaz.2003.167.1623),
2. Average wage in the second quarter 2004 – **2,230.53 PLN gross** (M.P. 04.35.617), average wage in companies in August 2004 – **2,412.66 PLN gross** (Dz. Urz. GUS.04.9.45)
3. Exchange rate of 18 November 2004: 1 Euro = approx. **4.24 PLN**
4. Social security contributions
  - a) Old age pension – **19.52%**
  - b) Disability pension - **13%**
  - c) Sickness benefits – **2.45%** borne exclusively by the employee
  - d) Accident insurance **from 0.40 to 8.12%** borne exclusively by the employer
5. Interest rate for tax debts - **16% (26.08.2004)**
6. Legal interest rate – **12.25% (25.09.2003)**
7. Monthly inflation rate – **3.2% in September 2004**