

## Dear Iu\$letter Readers,



**Henning von Zanthier**  
E-Mail: [vonzanthier@vonzanthier.com](mailto:vonzanthier@vonzanthier.com)

The Polish Ministry of Economy has published a new draft of the Polish Renewable Energy Sources Act on October 4th, 2012; which at the same time makes substantial changes to the last project of the Polish act on renewable sources dated July 27th, 2012. The amended act should enter into force in the middle of the year 2013.

According to the draft, renewable sources energy producers should be guaranteed additional revenues for the period of 15 years; however, those can be taken away if the produced energy is offered for more than 105% of the average price as stated in the act. Moreover different energy sources will be granted different support, with the solar energy placed on the highest position in the hierarchy. All in all, the differentiated support should influence the market.

The reaction of the market on the differentiated support should be visible in the coming years. After the big boom in the wind energy branch other energy sources, so far of only marginal importance, may become more firmly established in the future, i.e. biogas or solar energy.

For the time being we hope you will enjoy the reading of our Iu\$letter.

*Sincerely Yours,*

*Henning von Zanthier, LL.M. (legal counsel/Rechtsanwalt)  
and Magdalena Stawska-Höbel (lawyer)*

[top](#) ↑

## **DRAFT OF THE POLISH ENERGY ACT DATED OCTOBER 4TH, 2012 – PRESENTATION OF CHANGES AS COMPARED TO THE CURRENT REGULATION**

Energy production from renewable sources (RE) is currently regulated in the provisions of the Energy Act. The planned act on Renewable Sources should partly adopt the

## In this issue

- Dear Iu\$letter Readers,
- DRAFT OF THE POLISH ENERGY ACT DATED OCTOBER 4TH, 2012 – PRESENTATION OF CHANGES AS COMPARED TO THE CURRENT REGULATION
- RE-EMPLOYMENT CLAIM OF A MANAGEMENT BOARD MEMBER
- SUSPENSION OF BUSINESS OF A POLISH LIMITED LIABILITY COMPANY (Sp. z o.o.)
- EUROPEAN ORDER FOR PAYMENTS AS AN ALTERNATIVE METHOD TO ENFORCE CLAIMS OF FOREIGN CONTRACTING PARTIES
- POLISH COURTS RULINGS
- LAW FIRM'S EVENTS

## Newsletter

- [unsubscribe](#)
- [forward](#)
- [view in browser](#)

## The law firm

The consulting firm „von Zanthier & Schulz“ and „von Zanthier Kancelaria prawnicza“ provide services within the area of legal advice and tax consultancy as well as audit. Our purpose is to extensively attend to clients judicial and fiscal with their investment plans and exercise of economic activities in Germany and Poland. [www.vonzanthier.com](http://www.vonzanthier.com)



**Magdalena Stawska-Höbel**  
E-Mail: [stawska-hoebel@vonzanthier.com](mailto:stawska-hoebel@vonzanthier.com)

current provisions regarding renewable energy sources; however, there are also many new significant amendments of great importance to the investors.

1. The refunding system for RE consists of an average electricity price (in 2011: 47 EUR/MWh) together with the price for a certificate, which is obtained by the RE-producer for the bare fact of RE production (green or brown certificate). According to the draft, provisions concerning certificates have been significantly changed. The funding should be guaranteed for 15 years, however, no longer than until December 31st, 2035. This will put the energy producers in a far more advantageous situation compared to the current one, where the support is ruled by a provision on the basis of which the funding is granted for the maximum of 6 years (until 2021). However, the new draft foresees such cases in which the support will be fully excluded. For example: when the purchase prices of energy produced from renewable sources or from agricultural biogas, exceeds 105% of an average price that should amount to PLN 198.80 per MWh (approx. EUR 49) according to the new draft, which should be valorized every year.

2. Moreover the scope of support will depend, which is not the case now, on the type of source the energy comes from and on the type of renewable source the electricity is produced from. Here the so called "adjustment factor" should be introduced. The "adjustment factor" gives the possibility to differentiate funding depending on which renewable energy source is used. With this factor the normal price for green or brown certificate will be multiplied. Now the price for a green or a brown certificate amounts to 95% of the so called compensation fee, which is determined by the President of the Energy Regulatory Office (URE) on a yearly basis. In 2012 this compensation fee amounts for the green and brown certificates to PLN 286.74 per MWh (approx. EUR 68 per MWh).

Adjustment factors were explicitly determined in the draft dated July 27th, 2012. The new draft dated October 4th, 2012 does not include such a notion. Those factors should be determined in a regulation of the Minister of Economy in the future. The adjustment factors regulated in the draft dated July 27th, 2012; should be presented only briefly, because it is assumed that the future adjustment factors will orientate themselves towards the existing ones. As an example: in the wind energy sector in the countryside, for facilities with performance of more than 500 kW, adjustment factors were foreseen, for which the price of a green certificate should be multiplied as follows: in 2013 with 0.9, in 2014 with 0.9, in 2015 with 0.875, in 2016 with 0.85, in 2017 with 0.825. In this case the multiplier is less than 1. It is higher for example in the agricultural biogas branch in case of facilities with performance between 500 kW up to 1 MW. The price for a brown certificate should be multiplied in 2013 by 1.45, in 2014 by 1.45; in 2015 by 1.425, in 2016 by 1.40, in 2017 by 1.375.

According to the last draft of the Energy Act the highest adjustment factor is foreseen in the branch of solar energy.

top ↑

## RE-EMPLOYMENT CLAIM OF A MANAGEMENT BOARD MEMBER

---



Sabina Guzenda  
E-Mail: [guzenda@vonzanthier.com](mailto:guzenda@vonzanthier.com)

A management board member or a manager of one of the Polish capital companies (either a joint-stock company or a limited liability company) after his appointment to that position is in a special legal relationship with the company. Regardless of the act of appointment, the duties between the Company and the management board

member or a manager can be regulated by a contract of employment or civil contract (i.e. order, service contract or managerial contract)

According to article 202 § 4 of the Polish Companies Act (Kodeks spółek handlowych – KSH) the mandate of a manager expires, inter alia, upon his dismissal as a manager. However, that does not mean that the contract of employment or the civil contract with the dismissed manager expires automatically.

The contract concluded with the dismissed management board member or manager, who is at the same time an employee of the Company, has to be separately terminated according to labor law regulations. According to the Polish Labor Law Code (Kodeks Pracy – KP) an employee whose contract was unlawfully terminated may claim for a re-employment under the same conditions as earlier or he may claim compensation (article 45 § 1, article 56 § 1 KP).

The Polish Supreme Court has repeatedly discussed the question of rights of a management board member or a manager of a company, dismissed from his position of a manager and whose contract of employment was terminated afterwards. Court rulings of the Polish Supreme Court varied so far from case to case.

According to the newest Polish Supreme Court decision – passed by 7 judges – dated May 16th, 2012, AZ: III PZP 3/12, in case of an unlawful termination of a contract of employment with a manager or managing board member of a company, the claim for re-employment is not excluded.

*Sabina Guzenda, legal counsel*

top ↑

## SUSPENSION OF BUSINESS OF A POLISH LIMITED LIABILITY COMPANY (Sp. z o.o.)

---

According to article 14 para 1 of the Polish Economic Freedom Act dated July 2nd, 2004 (Journal of Laws 2010, no 220, position 1447 – usdg) an entrepreneur not



*Sabina Guzenda*  
E-Mail: [guzenda@vonzanthier.com](mailto:guzenda@vonzanthier.com)

employing any workers may suspend his economic activity from 30 days up to 24 months.

According to a legal definition the status of an entrepreneur may be also applied to the Polish Limited Liability Company (Spółka z ograniczoną odpowiedzialnością – Sp. z o.o.).

During the period of suspension of economic activity the entrepreneur may not perform any economic activity nor can he obtain any current revenues from the activity. He is however entitled to:

- perform all activities, which are essential to protect and safeguard the revenue sources;
- accept active debts, which arose after the beginning of the suspension;
- dispose of his own fixed assets and equipment;
- take part in a lawsuit, financial procedures or administrative procedures, which were connected with the economic activity before its suspension;
- obtain revenues, which may also stem from the economic activity before its suspension.

Moreover, within the period of suspension the entrepreneur is obliged to:

- settle all obligations, which arose before the beginning of the suspension;
- take part in a lawsuit, financial procedures and administrative procedures, which were connected with the economic activity before its suspension;

During the period of suspension the entrepreneur has to fulfill all obligations foreseen in the Act. He can also be controlled as if his activity had not been suspended.

Suspension and resumption of the economic activity may take place only upon entrepreneur's application. The Polish Limited Liability Company (Sp. z o.o.) which may want to suspend its activity, has to file an application to a register court. The application has to be accompanied by a statement, that the company does not employ any employee. There are no fees foreseen for the registration of suspension, neither has it to be published in official gazette (the Court and Economic Monitor).

Provided that the Company informs the appropriate head of tax office in writing within seven days after the application for suspension registration is filed, it will be free from the obligation to make monthly advance income tax payments during the time of suspension.

**The suspension of economic activity of a Polish Limited Liability Company (Sp. z o.o.) is an advisable solution for those companies, which for different reasons did not take up any**

operative activity or did not employ any employees, as well as for those which due to lack of prospects of taking up operative activity are close to wind-up. Suspension of economic activity reduces costs of such companies and saves time which may be spent on search for investors.

*Sabina Guzenda, legal counsel*

top ↑

## EUROPEAN ORDER FOR PAYMENT AS AN ALTERNATIVE METHOD TO ENFORCE CLAIMS OF FOREIGN CONTRACTING PARTIES



*Sabina Guzenda*  
E-Mail: [guzenda@vonzanthier.com](mailto:guzenda@vonzanthier.com)

Enforcement of a claim by a contracting party is a long-lasting and often an expensive process. Having that in mind it is worth considering using a quite new legal remedy of the European order to pay. This remedy is an additional alternative – beside the nationally regulated proceedings – to enforce claims against dishonest contracting

parties abroad.

European order for payment procedure was introduced by Regulation (EC) No 1896/2006 of the European Parliament and of the Council of December 12th, 2006 creating a European order for payment procedure. The aim of the European order for payment procedure was to simplify, accelerate and reduce costs of the transnational proceedings, which exceeded the undisputed pecuniary claim. The European order for payment procedure is valid in all EU-member states, except for Denmark.

The European order for payment can be passed both in civil and commercial matters, when at least one of the parties of the dispute has its seat or its place of residence in one of the EU-member States different from the one where the court is. The European order for payment can also be passed i.e. upon request of a German entrepreneur against a Polish contracting party (or vice versa).

The European order for payment may not be applied in tax proceedings, in duty or administrative matters nor in cases of liability of the State for acts and omissions in the exercise of State authority. Moreover, the European order for payment cannot be applied in claims concerning:

- rights in property arising out of a matrimonial relationship, wills and succession;
- bankruptcy or insolvency proceedings;
- social security;
- claims arising from non-contractual obligations.

The European order for payment with regard to the pecuniary claims to a specific amount, which has fallen due at the time when the application is submitted, may be passed. The application to pass a European order for payment shall be submitted on a form. It has to include: parties' description, the amount of claim including interests and costs, justification of the claim, description of evidence

supporting the claim, legal standing of the court and the description of the cross-border character of the case.

The court will prove whether the application is justified and whether all formalities have been fulfilled. If all conditions are fulfilled the court passes the European order as soon as possible, within the maximum of 30 days after the application has been filed. In the order for payment the respondent will be informed by the court, that either he has to pay to the applicant the amount indicated in the order or within 30 days he can file an objection if he wants to contest the claim. If the defendant files an objection to the European order for payment shall be null and void and the court will decide on the matter in relevant proceedings according to national law.

If the defendant does not file an objection or if the objection is not filed at due time, the court declares the order for payment immediately enforceable. The creditor has the possibility to pursue the enforcement within the European Union, with no need to declare the enforceability by a court decision of the executing state, which is necessary in the case of a decision of simple court proceedings.

**The main advantages of the European order for payment are short proceedings and its immediate enforceability, because it allows the enforcement without the need to start any separate enforceability declaration procedures for the enforceable title, which substantially accelerates the proceedings for claim enforceability of contractual parties and reduces the costs of proceedings.**

*Sabina Guzenda, legal counsel*

[top ↑](#)

## POLISH COURTS RULINGS

---

- In its decision dated May 12th, 2011, AZ: III CZP 15/11 the Polish Supreme Court has presented the following opinion: “A creditor, one of whose debtors is his spouse, may according to article 527 § 1 of the Polish Civil Code (Kodeks cywilny – KC) demand to declare the legal transaction invalid, which was conducted by both spouses and which regards marital joint-property, if the spouse of the debtor was not granted any consent on entering into liability according to art 41 § 1 of the Polish Family- and Guardianship Code (Kodeks Rodzinny i Opiekuńczy – KRO)”.
- According to the decision of the Polish Supreme Court dated October 12th, 2011, AZ: II CSK 95/11: “A manager of a limited liability company is not jointly and severally liable for the Company’s obligation towards its creditors, when the compulsory execution against the Company turned out unsuccessful (article 299 of the Polish Companies Code), if the creditor, whose claim was secured by a security agreement, has not undertaken any actions to satisfy his claims as of prime importance, from the secured thing or claim, although he had such a possibility.
- In the judgment dated June 25th, 2012, AZ: I FPS 4/12, the Polish Supreme Administrative Court in Warsaw decided as follows: “As long as a provision is binding, may tax authorities interpret it individually, even if the Polish Constitutional Tribunal declares its unconstitutionality”.

*Sabina Guzenda, legal counsel*

## LAW FIRM'S EVENTS

---

### Participation in various events:

Agata Krol – lawyer – took part in German-Polish Logistic Day in Erkner on September 27th, 2012.

On the November 13th, 2012 Aleksandra Dziurzynska will give a lecture on a conference “Law and Telemedicine” in Warsaw.

Magdalena Stawska-Höbel – lawyer – will take part in International Fair of Environmental Protection – POLEKO in Poznan on November 20th, 2012.

Sabina Guzenda - legal counsel – takes regular part in various insolvency conferences, and Karolina Barańkiewicz-Sokal – legal counsel – participates in events organized by Polish Wind Energy Association PSEW.

Our law firm took part both in Exporter's Fairs in Poznań on October 23rd, 2012 and in the International Food Fairs Food & Taste 2012 on October 19th, 2012 in Frankfurt/Oder.

### 20 Years of DIRO

22.11. – 24.11.2012

The Law Firm „von Zanthier & Schulz” has the pleasure of being the host of a meeting on the occasion of the 20 year-anniversary of DIRO

### 25. LAWASIA Conference

From November 18th, until November 21st, the 25th LAWASIA-Conference will take place in Indonesia. The main subject of the event will be “When the acquisition goes wrong – there are legal consequences” which will be presented by Henning von Zanthier LL.M. – lawyer/ legal counsel.

This newsletter is published by  
von Zanthier & Schulz  
Rechtsanwalt Steuerberater Wirtschaftsprüfer  
Partnersgesellschaft  
BERLIN – POZNAŃ  
Kurfürstendamm 217 – 10719 Berlin  
Fon: +49 30 88 03 59 0  
Fax: +49 30 88 03 59 99  
Web: [www.vonzanthier.com](http://www.vonzanthier.com)  
Email: [iusletter@vonzanthier.com](mailto:iusletter@vonzanthier.com)

All rights reserved © 2012 von Zanthier & Schulz  
This email was sent to you because you subscribed to the von Zanthier & Schulz newsletter service.

This newsletter is been issued monthly.  
To remove yourself from the subscription list just click the link below.  
[unsubscribe from this newsletter](#)

Did a friend forward this email to you? If you feel well-informed, you can get your own copy.  
[Register for iusletter on our website.](#)