

Polish national and sectoral plans of emissions reduction – is this risk manageable?

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On the 19 of June 2009 the lower house of the Polish Parliament (Sejm) has adopted the bill on the management system of GHG emissions and other substances.

The bill provides inter alia for legal framework for national and sectoral plans of emissions reduction.

During the course of the legislative proceedings the main controversy was the position of forests as a sinks of a carbon.

But, paradoxically, the legal basis for national and sectoral plans of emissions reduction evoke no questions or discussions. This is surprising, because these plans are actually real threat for Polish companies and entrepreneurs.

The insolvency is not excluded

The new bill confers the power on the Ministry of the Nature Conservation to set caps on emissions of installations. These caps may cause the necessity of the trade contracts to be terminated. Such measures can bring even the insolvency about.

It is disturbing, that criteria for new plans of emission reduction are ambiguous and a discretion on this lies only with the Ministry.

First of all, sectoral plans of emissions reductions will be introduced in a form of a simple, implementing measure - regulation of a Ministry (in cooperation with other Ministries).

Once issued, emissions reduction plan may lead to confinement or withdrawal of a permission to emit substances into the atmosphere. Criteria for election of entities, who may be subject to these sanctions, firstly - are not statutory, and secondly - are unfortunately ambiguous.

This ambiguity exposes entrepreneurs to a discretion of the Ministry – which we presume as much too wide.

Who will be included in the black list

The essential part of the sectoral plan of emissions reduction is the specification of:
“either the list of entities taking advantage of the environment, which are obliged to a emissions reduction, when established caps on emissions are reached, or criteria for the qualification of installations, which are obliged to a emissions reduction.”

Neither this article nor other provisions of that statute do not precisely indicate, who may be included into this „list”. Statutory precondition to establish “a list” is a situation, where the emission cap is exceeded in the national dimension.

So, an entity, which doesn't exceed any own environmental emission thresholds (set in the individual emission permit), can be included in the plan.

A single entity (even the biggest) has however no decisive influence on a possible exceeding of the national emission cap.

The regulation seems not to be advantageous for the Ministry itself. Driven by the law perspective to establish a list – where this law does not specify statutory preconditions in this respect – exposes the Ministry at the risk of lobbying and claims for damages redress. Lets remind difficulties, that occurred, when Polish NAP I and NAP II were being adopted and how long it was lasting.

So, the new statute in this respect cannot be treated as a solid and predictable base for carrying out economic activity.

Above stated risks were known to the legislature prior to the voting on a new law, as PSE – Operator S.A. (Polish Transmission System Operator - TSO) expressed its interest in the draft bill and delivered its opinion emphasizing all above mentioned reservations (parliamentary document No 1936 made 22.04.2009 - available in the Internet).

Above mentioned risks were explicitly specified by the TSO. It was mentioned in this document, that establishing of the national emission reduction plan *“[...] should be regulated more in detail, than it was set out in the draft bill. As a consequence of a ambiguity in respect of the scope and the way such plans are established there will be more uncertainty relating to carrying out economic activity and planning of investments. The uncertainty in respect of the rules on functioning of the electricity sector may cause that investments will be confined. In the situation, where the assets of the sector are used up, it poses a significant threat to the certainty of the supply of electricity.”* (translation into English made by author).

TSO also stated – and it seems, the TSO was right – that:

1) the national emission reduction plan should set out the statement (a concrete list) and not only “elementary directions and the scope” of possible measures, that should be initiated with a view to abate of national emissions,

2) sectoral emission reduction plan is only a implementing plan and it should propose measures that adhere to the legal requirements currently in force.

The text of the above mentioned parliamentary document No 1936 proves, that the reservations of TSO were taken into account only in part and superficially. In the minutes of the Sejm (lower House of the Parliament) and parliamentary commissions there are no traces, indicating that above stated controversy was at any time considered or discussed.

Its a pity, because it is contrary to the official statements of the government, according to which investment needs of the power plant sector have now priority and there is an urgent necessity to build a safe and stable legal environment for investments in this sector.

Perspective

Above considerations should be read in the light of words of Wojciech Jaworski – the Head of the Polish National Administration of the Emissions Trading Scheme – that were spoken at the sitting of the Commission of the Nature Conservation, Natural Resources and Forestry on the 6 of may 2009 (according to the Bulletin of the Commission No 2215/VI).

These words are worth of to be cited accurately:

“It is the case of delivering of emission reductions of other substances. According to our information and analyzes made for the European Commission, for instance in the year 2020 the estimated cap for NOx for Poland will be 35 % of the emissions in the year 2007, in which year emissions from transport only amounted to 40 %. In this respect we have today another problem. Today we talk about a possibility of selling of a carbon dioxide. But that regulation is required to help government to build national plan of emissions reductions and sectoral plans, because in the perspective of the year 2020 – i.e. also climatic legislation – we can be exposed at risk that we will not be able technically to deliver emission reductions of other pollutants – for no money.” (translation into English made by author).

What can be done

Taking into account, that the procedures in the Parliament are not finished yet, it is a possibility to improve the text of the new law. The leitmotiv of this improvement should be to reshape these provisions in such a manner, that companies have a chance to accommodate to them. Because the situation, in which the companies don't have any possibility to manage the risks, consequently always is the most expensive.