

## **Another amendment to the Nuclear Specs Law on the horizon. Assessment of the assumptions of the UD 118 bill**

On 20 August 2024, the Assumptions to the Draft Law on Amendments to the Law on the Preparation and Execution of Investments in Nuclear Energy Facilities and Associated Investments (the Nuclear Special Act) and Certain Other Laws (UD 118) were published in the Legislative Work List. This is one of two draft amendments to the Nuclear Special Act, published on the same day. According to the stated goals of the draft, the amended regulations are intended to allow the staging of the construction process of a nuclear power facility, which will positively impact streamlining the preparation and implementation of the investment.

### **CURRENT LEGAL STATUS**

Due to the nature of nuclear power facilities, the construction start stage must be approved by two authorities under two separate administrative proceedings: The President of the National Atomic Energy Agency (PAA), who first issues a construction permit (nuclear authority), and the Governor, who issues a construction permit (non-nuclear authority) after a positive decision by the PAA President. The construction permit is issued on the basis of the provisions of the Construction Law, subject to the exceptions provided for in the Nuclear Special Act. Pursuant to Article 15 (3) of the Nuclear Special Act, as it currently stands, a construction permit for a nuclear power facility may cover all or part of the construction project. At the same time, the regulations do not specify to what extent and according to what criteria the investment can be divided into parts. It is unclear in what relation this regulation remains to Article 33(1) of the Construction Law, which allows for the issuance of a construction permit only for the entire construction project unless it is possible to separate structures or a set of structures that can function independently. Significantly, the submission of an application for a construction permit, even for a part of a construction intention involving a nuclear power facility, does not exclude the obligation to obtain a construction permit issued by the PAA President.

The Special Act also provides for the possibility of obtaining a permit for preparatory work even before the issuance of a construction permit, which is enumerated in Article 17 (1)(1)-(3). However, the catalogue does not include construction work strictly related to the construction of a nuclear power facility. Polskie Elektrownie Jądrowe, in its announcement dated 28 August 2024, said that it had decided to take advantage of this legal institution and had applied to the Pomeranian Governor for a permit to begin the first stage of preparatory work, which includes, among other things, securing the site for future construction and surveying work.

### **PROPOSED CHANGES**

The amendment is to introduce two new categories of administrative acts issued by the architectural and construction administration body (the Governor). The first is a construction permit for a part of a construction project that cannot function independently. As one might assume, this is a clarification of the subject matter of the partial construction permit referred to in Article 15(3) of the Nuclear Special Act, excluding the general rule under the Construction Law. The second completely new act introduced by the amendment would be a construction permit covering preliminary construction work. The procedure for issuing a construction permit covering preliminary construction work will vary depending on whether the preliminary work specified in the application is relevant to nuclear safety and radiological protection (qualified preliminary construction work) or not (basic preliminary construction work). In the case of basic works, only the Governor will need to issue a permit to start them. Qualified works previously additionally required the issuance of a permit by the nuclear authority - the PAA President.

A catalogue of both categories of works is to be listed in the law but will not be a closed catalogue. If certain construction works are not statutorily assigned to either category, the investor will have the opportunity to obtain the opinion of the PAA President as to the evaluation of the characteristics of the works.

## **EVALUATION OF THE ASSUMPTIONS OF THE AMENDMENT**

In principle, due to the specific nature of nuclear investments, any change in the regulations allowing the investment to be divided into phases and resulting in the possibility of an earlier start of construction work at the selected site should be viewed positively. However, the published assumptions for the amendment to the law are not yet specific. A full assessment will be possible only after the full draft of the amendment is made available to the public. It is not yet clear whether the investor will have the freedom to determine the parts of the construction project for which they will be able to apply for a construction permit, as well as what specific works will be included in the statutory catalogue of preliminary construction works. An important element that should also be statutorily defined is the relationship of the new categories of administrative decisions to those already functioning in Polish legislation - e.g., the permit issued by the PAA President in relation to qualified preliminary construction works in relation to the authority's construction permit covering the entire nuclear power facility. It seems that in order to achieve full optimisation of procedures, issues once evaluated by the nuclear supervision authority should not be subjected to such evaluation again. Importantly, the changes may prove beneficial not only for the Pomeranian investment but also for other projects, such as SMR, and realistically accelerate their implementation.

The possibility of issuing acts of authorisation for partial or preliminary construction work on nuclear projects is not new in foreign legislation. For example, U.S. legislation provides for a procedure for the issuance of an Early Site Permit by the Nuclear Regulatory Commission (the nuclear regulatory authority), under which the investor has the opportunity to apply for Limited Work Authorisation. Limited Work Authorisation permits certain construction work directly unrelated to nuclear safety (non-safety-related). Poland's drawing on the experience of countries with extensive experience in nuclear investment is a welcome development, but specific solutions must be adapted to Polish realities.

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