

## **Preliminary construction works - a new institution in the draft amendment of the special nuclear investment act**

On December 18, 2024, the long-awaited draft amendment to the Law on Preparation and Implementation of Investments in Nuclear Power Facilities and Certain Other Laws was published on the website of the Government Legislation Center. The assumptions of the draft law had already been known since August, but only now has the draft been submitted for opinion and public consultation.

The draft law aims to streamline the implementation of nuclear investments. As indicated in the justification, it was developed taking into account international experience, and the changes are expected to speed up the construction process without compromising nuclear and construction safety standards by up to 2 years. The proposed solutions are primarily intended to increase the flexibility of the administrative process by allowing investments to be phased.

### **PRELIMINARY CONSTRUCTION WORK**

The main measure envisaged in the draft to ensure the achievement of the stated goals is the institution of preliminary construction works and related new administrative decisions. The revised regulations introduce two categories of preliminary construction work:

- **Basic preliminary construction work** - unrelated to nuclear safety and radiation protection, and including, but not limited to: earthwork, site drainage work, construction of fire reservoirs, and construction of certain facilities indicated in the Act. They will not require prior authorization from the President of the National Atomic Energy Agency (PAA), but will only require the investor to obtain a permit for preliminary construction work issued by an architectural and construction administration body - the provincial governor.
- **Qualified preliminary construction work** - related to nuclear safety and radiological protection, such as: strengthening of the subsoil for the construction of buildings included in the nuclear power facility, stabilization or waterproofing of this subsoil, construction of some elements of the facility's foundations or installation of reinforcement cages, elements embedded in reinforcement cages and necessary installations. These works will require not only a permit from the provincial governor but also a previously issued and newly introduced permit (license) from the PAA President (different from the law's existing permit for construction of the entire facility (construction license)).

The catalog of preliminary construction works (qualified and basic) is not closed. According to the proposed Article 17b of the Special Nuclear Investment Act, the investor will be able to apply to the PAA President for an opinion on whether the planned works are preliminary works and which category they should be classified in (basic or qualified). The fee for the request for an opinion is PLN 200,000. The President issues an opinion within 3 months (or 6 months in particularly complicated cases). The draft provides for four possible settlements by the PAA President regarding the investor's planned work:

- constitute preliminary construction work and do not require a permit (license) from the PAA President;
- constitute preliminary construction work and require a permit (license) from the PAA President;
- do not constitute preliminary construction work and require a full nuclear facility construction license;
- do not constitute preliminary construction work and do not require a full nuclear facility construction license.

### **PROCEDURE FOR OBTAINING PERMITS AND AUTHORIZATIONS**

Proceedings for the issuance of a permit for preliminary construction work will be regulated in newly added Articles 17a and 17c to the Special Nuclear Investment Act. In turn, the procedure for the PAA President's new license is to be the subject of a new drafting unit of the Atomic Law - Article 36l.

The investor may apply for a construction permit for preliminary construction work before obtaining the main construction permit for the nuclear power facility, but after obtaining the decision in principle, the environmental decision and the location decision. The latter two acts must be attached to the permit application in addition to the other documents listed in the act. The governor shall issue the permit within 30 days of receiving the application.

In the case of qualified preliminary construction works, the developer submits a permit (license) application to the PAA President. The permit (license) submission is necessary for the governor to issue a construction permit - the permit (license) can be submitted during the proceedings and will no longer need to be submitted with the application, which means that the two administrative proceedings will be able to proceed in parallel. The required attachments to the license application are specified in the newly added Annex 7 to the Atomic Law (erroneously labeled in the draft as an annex to the amendment). The application fee is PLN 1,500,000. The PAA President's decision is issued within 9 months of the submission of a complete application after the prerequisites specified in detail in the proposed Article 36l (4) and (5) are met. The procedure also requires consultation with the Head of the Internal Security Agency regarding the facility's physical protection system, and this opinion is binding on the PAA President - he can only issue a decision on the permit (license) if he receives a positive opinion.

The amendment also seeks to clarify Article 15(3) of the Special Nuclear Investment Act. Currently, on the basis of this provision, a developer may apply for a construction permit for a nuclear power facility covering all or part of the construction project. The draft adds explicitly to this provision the wording that the permit may apply to a part that cannot function independently as intended.

What is missing from the draft is a relation of the decisions issued on preliminary construction work to the subsequent stages of the investment process, including the construction permit and the construction license for the entire facility. Consultations on the draft law will last until January 7, 2025.

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