

## Revised regulatory regime for the medium combustion plants (1-50 MW)

Polish Parliament adopted the Amendments to the Environmental Protection Act (“**Amendment**”) which implement the provisions of the Directive of the European Parliament and of the Council no. 2015/2193 dated 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (“**MCP Directive**”). The Amendments entered into force on 27 November 2017.

The new law provides for the **revised regulatory regime covering the medium combustion plants**. In practice, it is assumed that the new provisions **will affect operators of up to 5,000 Polish installations with a rated thermal input equal or greater than 1 MW and less than 50 MW (“MCPs”), including power plants, district heating installations as well as other installations used in production industry for the purpose of heat and/or power generation (including CHP facilities and back-up power generators), gas compressor stations, etc.**

The Amendments **change current regulatory regime in the area of registration** (including permitting and notification) **as well as emission standards** to be complied with during exploitation of the MCPs which will result in additional formalities, emission measurements, notifications and requirement to make investments in order to comply with the new emission standards within the respective timelines.

### New emission standards (caps on emissions)

The MCP Directive as well as implementing measures provide in particular for the new reduced limits of the SO<sub>2</sub>, NO<sub>x</sub> and dust emissions into the air, such limits varying depending on the type and fuel used in the pertinent MCP as provided below.

In general, the new emission standards shall enter into force gradually in accordance with the following timelines (subject to certain derogations which may be applicable under certain conditions to i.a. district heating facilities and gas compressor stations):

- 1) from 20 December 2018 onwards – to the new MCPs;
- 2) from 1 January 2025 onwards - to the existing MCPs with rated thermal input exceeding 5 MW and lower than 50 MW;
- 3) from 1 January 2030 onwards - to the existing MCPs with rated thermal input below 5 MW.

This information was prepared to advise the Firm’s Clients of selected important changes in Polish law and does not represent a legal advice on a specific situation of any Client and should not be treated by Clients as such. Should you have any questions concerning the legal matters outlined above as they may apply to your business in Poland, please contact the partner in charge of your account.



The new emission standards shall be as follows:

**1. Existing MCPs (i.e. put into operation before 20 December 2018)**

(a) Other than engines and gas turbines

Pollutant (mg/Nm <sup>3</sup> )	Solid Biomass		Other solid fuels		Gas oil		Liquid fuels other than gas oil		Natural Gas		Gaseous fuels other than natural gas	
	RTI*: 1-5 MW	RTI: > 5 MW	RTI: 1-5 MW	RTI: > 5 MW	RTI: 1-5 MW	RTI: > 5 MW	RTI: 1-5 MW	RTI: > 5 MW	RTI: 1-5 MW	RTI: > 5 MW	RTI: 1-5 MW	RTI: > 5 MW
SO <sub>2</sub>	200	200	1 100	400	-	-	350	350	-	-	200	35
NO <sub>x</sub>	650	650	650	650	200	200	650	650	250	200	250	250
Dust	50	30	50	30	-	-	50	30	-	-	-	-

\*RTI – rated thermal input

(b) Engines and gas turbines

Pollutant (mg/Nm <sup>3</sup> )	Type of medium combustion plant	Gas oil	Liquid fuels other than gas oil	Natural gas	Gaseous fuels other than natural gas
SO <sub>2</sub>	Engines and gas turbines	-	120	-	15
NO <sub>x</sub>	Engines	190	190	190	190
	Gas trubines	200	200	150	200
Dust	Engines and gas turbines	-	10	-	-

**2. New MCPs**

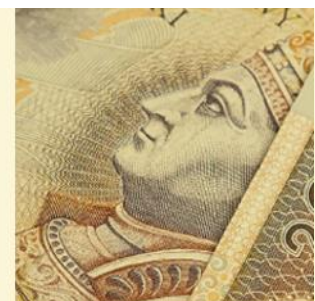
(a) Other than engines and gas turbines

Pollutant (mg/Nm <sup>3</sup> )	Solid Biomass	Other solid fuels	Gas oil	Liquid fuels other than gas oil	Natural gas	Gaseous fuels other than natural gas
SO <sub>2</sub>	200	400	-	350	-	35
NO <sub>x</sub>	300	300	200	300	100	200
Dust	20	20	-	20	-	-

(b) Engines and gas turbines

Pollutant (mg/Nm <sup>3</sup> )	Type of medium combustion plant	Gas oil	Liquid fuels other than gas oil	Natural gas	Gaseous fuels other than natural gas
SO <sub>2</sub>	Engines and gas turbines	-	120	-	15
NO <sub>x</sub>	Engines	190	190	95	190
	Gas trubines	75	75	50	75
Dust	Engines and gas turbines	-	10	-	-

The new emission standards will be reflected in the new secondary legislation to the Environmental Protection Act. Besides, the **board of each voivodship may also provide for further reduction of the emission standards applicable to MCPs in respective regions depending on actual quality of the air and best available techniques made available by the European Commission.**



### New regulations implemented by the Amendment

Apart from the new emission standards, the Amendments provide for the following regulations, most of which (but not all) implementing the MCP Directive mechanisms:

**[Exploitation decision]** The Amendments ensure that each MCP must be covered by decision setting forth the emission limits. For that purpose the competent authorities shall initiate *ex officio* the respective proceedings to issue the exploitation decisions indicating such emission limits with regard to those operators whose MCPs do not require obtaining the emission permits or integrated permits (i.e. MCPs subject to the notification obligation).

**[Temporary derogations]** According to the Amendments, some existing MCPs (including facilities supplying heat to the district heating networks as well as gas compressor stations) may benefit from derogation from the emission standards set forth in the MCP Directive. Such derogation is temporary (basic MCP Directive emissions standards must be complied with not later than by 1 January 2030) and depends on specific formalities to be carried out by 1 January 2024.

The Amendments do not provide for derogation in case of the MCPs using biomass fuels, although implementation of such a derogation by the EU member states is possible under the MCP Directive.

**[Third aggregation rule]** The Amendments provide for an additional interpretation rule applied for the purposes of determination of the rated thermal input of the particular MCP. According to the so-called “third aggregation rule” (pol. “trzecia zasada łączenia”), two or more new MCPs shall be considered to be a single MCP and their rated thermal input shall be added together for the purpose of calculating the total rated thermal input of the plant, where:

- the waste gases of such medium combustion plants are discharged through a common stack, or
- taking into account technical and economic factors, the waste gases of such medium combustion plants could, in the judgement of the competent authority, be discharged through a common stack.

In practice, the third aggregation rule might affect i.a. deadline for adjustment to the emission standards if MCP below 5 MW are aggregated in one MCP exceeding 5 MW.

**[Commissioning of MCPs]** The Amendments burden the MCP operators with additional notification obligations (in particular, notification obligation extended to MCP with rated thermal input of 1 MW) as well as obligation to provide authorities with additional information within the existing notification and permitting procedures (including i.e. economic activity pursued by MCP operator and statistical number (REGON) of the operator, emission standards applying to the MCP).

The Amendments provide also for obligation to carry out initial measurements of the emissions from the new MCPs and MCPs significantly modified after 20 December 2018 (as of the time being, such an obligation pertains to the MCPs covered by the emission permit or integrated permit).



**[MCP Register]** The Amendments establish the national register of all MCPs located in Poland (“**MCP Register**”) to be maintained by KOBIZE (National Center of Emission Balancing and Management). Data gathered in the MCP Register shall be collected from local authorities competent to issue the emission permits – in any case not later than 27 November 2020. If the competent authorities are not in possession of all required information they will request the MCPs’ operators to provide necessary information.

**[Documentation storage]** Pursuant to the Amendments, the MCP operators shall be obliged to keep for a period of at least 6 years in particular the following documents: (i) the emission permit or the proof of registration by the competent authority, (ii) the results of the MCP’s emission monitoring, and (iii) the record of the events of non-compliance with emission values as well as the measures necessary to ensure that compliance is restored within the shortest possible time.

**[Excluding large waste combustion plants from IED derogations]** Irrespective of the regulations regarding the MCPs, the Amendment clarifies that any large combustion plant (i.e. combustion plant with rated thermal input equal or greater than 50 MW) incinerating waste which cannot be classified as biomass, is not entitled to benefit from the derogations dedicated to large combustion plants specified in the IED Directive (no. 2010/75/UE).

### Potential impact of the Amendment

According to the governmental estimations, by the end of 2015 there were over 4,800 MCPs operating in Poland, most of which were MCPs with rated thermal input between 1-5 MW (i.e. 3,441). MCPs are used for a wide variety of applications, including: electricity generation, domestic/residential heating and cooling, providing heat/steam for industrial processes etc.

The Amendments will affect in particular:

- 1) the operators of MCPs with rated thermal input equal to 1 MW – such entities will be subject to notification requirements;
- 2) all the MCP operators – such entities will be burdened with i.a. additional notification obligations (additional data to be provided to authorities), as well as an obligation to comply with the new emission standards by certain dates, obligation to carry out additional measurements and store additional data.



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