

Draft Promotion of Electricity Generation in Offshore Wind Farms Act published



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Introduction

On 15 January 2020 the draft Promotion of Electricity Generation in Offshore Wind Farms Act was published on the Government Legislation Centre's website. Among other things, the proposed act aims to create a regulatory environment that encourages investors to carry out offshore wind farm projects. In turn, this will enable Poland to fulfil its obligations under the EU Promotion of Energy from Renewable Sources Directive (2018/2001/EU) – namely:

- ensuring that at least 15% of its total gross final energy consumption comes from renewable energy sources; and
- contributing to achieving the binding overall EU target of at least 32% of all energy consumption coming from renewable energy sources by 2030. As part of its commitment to achieving this target, Poland has pledged to fulfil 21% to 23% of its final gross energy needs using renewable energy sources by 2030 (assuming that a 23% share will be possible if the country is granted additional EU funds, including for transition).

Promoting the generation of electricity via offshore wind farms is also expected to prevent the so-called 'generation gap' (ie, an insufficient amount of electricity relative to demand).

Under the current regulations, obtaining support for offshore wind farms is impossible. Further, the currently binding requirements to obtain certain decisions and permits are an obstacle to implementing such projects, which require significant investment expenditure (resulting from, for example, the need to carry out expensive investigations) and are subject to a high level of uncertainty as to the final size of the constructed facility.

The draft act aims to support offshore wind farms and facilitate the administrative procedures required to obtain the relevant decisions and permits. In addition, the act will impose certain obligations on investors in order to stimulate the development of the local supply chain and legislate a tax on offshore wind farms (because, unlike in the case of onshore wind farms, property tax does not apply to offshore wind farms).

Forecast for offshore wind farm market

The need to develop Poland's offshore wind farm sector was stressed in the draft Energy Policy of Poland until 2040 (EPP 2040), which was updated following public consultations.⁽¹⁾ It has been argued that considering the increased profitability of producing energy via offshore wind farms, the development of such farms is a strategic objective within the framework of developing Poland's renewable energy sources. The predictive analyses provided in Annex 2 to the EPP 2040 estimate that the market potential of onshore wind farms is 10GW of installed capacity, and the potential of

offshore wind farms is estimated to equal 4GW by 2030 and 8GW by 2040. According to predictions, the first offshore wind farms will commence operation in 2025 and are expected to produce most of their electricity using renewable energy sources. EPP 2040 also highlights the need to establish a legal framework for the development and operation of offshore wind farms in the national power system through passing a relevant act in 2020, which will enable the first of such wind farms to be connected to the national power system in 2025. According to the EPP 2040, the support mechanisms offered to offshore wind farms will be quite specific because they are a new technological solution and therefore have no market competitors. However, at the same time, their marketing is important for Poland.

Similar conclusions are offered in the National Energy and Climate Plan for 2021 to 2030 (NECP). The necessity to develop an NECP arose from the EU Governance of the Energy Union and Climate Action Regulation (2018/1999), amending EU Regulations 663/2009 and 715/2009 and EU Directives 1994/22/EC, 1998/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU, 2013/30/EU, 2009/119/EC and 2015/652 and repealing EU Regulation 525/2013 (as amended). The NECP was adopted by the Committee for European Affairs on 18 December 2019 and submitted to the European Commission by the minister of state assets on 30 December 2019. **(2)** In principle, the document corresponds to EPP 2040, but puts an additional emphasis on two aspects involved in the development of offshore wind farms:

- the expected positive impact of these energy sources on the flexibility of the power system; and
- the need to simultaneously invest in the development of transmission networks in the north of Poland.

Notably, the permits to build artificial islands, the location permits for the entire offshore route of the connection cable and the environmental consent decisions required for offshore wind farm investments to proceed were issued for the first investment projects in 2016. Connection agreements that enable said sources to be connected to the national power system have also been signed. However, these projects have yet to commence, as the investors are waiting for the act regulating matters concerning offshore wind farm investments and functioning to be passed.

Proposed support system

In accordance with the draft act, the support system will take the form of a bilateral contract for difference. This means that it will cover the difference between the market price of electricity and the price enabling producers to cover the costs of producing electric energy offshore.

The amount of support will be the product of the planned installed capacity of a wind farm and 100,000 hours. The unit price will be specified in the regulation issued by the minister in charge of energy for subsequent calendar years until 2022. According to the draft, wind farms can commence operation and access the support system in stages. The maximum period of support is 25 years from the date of generation and supply of the first portion of energy into the grid. The costs involved in the support system will be covered using the existing fee for renewable energy sources, which is why the act's enactment will not generate additional costs to be borne by end users. The draft also provides for mechanisms to prevent the excessive support and generation of electricity during periods of negative electricity prices.

The support system's first stage of implementation will cover 2020 to 2022 for offshore wind farms with a total installed capacity of 4.6GW. It will be dedicated to projects which are at a specific stage of advancement (ie, projects for which a network connection agreement has been already signed). To take advantage of the offered support at that stage, a request for confirmation of the existence of the incentive effect (ie, an acknowledgement that an investment project will not be implemented if it does not receive the requested support) must be submitted to the President of Poland's Energy Regulatory Office. Once such a certificate is issued, it will be possible to apply to the President of the Energy Regulatory Office for an administrative decision on the provision of support. The following documents must be included with the submitted request:

- an agreement on the connection of the offshore wind farm to the transmission or distribution network;
- a final environmental consent decision;
- a valid permit to build or use artificial islands, structures and equipment in Polish maritime areas for projects located in the exclusive economic zone;
- a schedule of works and expenditures for the construction of an offshore wind farm, ensuring the generation of electricity and supply of the electricity generated by the offshore wind farm into the network to schedule; and

- a plan of engagement of local resources and services.

Applicants must also declare that they have engaged in a dialogue with the potential providers of goods and services used in the course of the construction and use and operation of the offshore wind farm.

Support will be granted on a first-come, first-served basis. Because decisions on the provision of support are issued outside competitive procedures, the European Commission must be notified. Support funds will not be paid until the European Commission has issued a decision acknowledging the granted support as acceptable under the regulations governing state aid.

At the second stage of the support system, support will be granted to investors selected through auctions. The offered price will be the determining factor. The first auctions are scheduled for 2023, 2025, 2027 and 2028 if the offshore wind farm total installed electric capacity as declared in the submitted proposals selected in the 2027 auction is lower than the offshore wind farm maximum installed electric capacity defined for a given calendar year. The total maximum installed electric capacity of offshore wind farms which may be eligible for support corresponds to:

- in 2023 – the difference between the maximum installed electric capacity in the amount of 4,600MW (maximum installed electric capacity for which the President of the Energy Regulatory Office may issue a decision on the provision of support at the first stage of the support process) and the total installed electric capacity of offshore wind farms for which the President of the Energy Regulatory Office has issued decisions on the provision of support;
- in 2025 – 2.5GW; and
- in 2027 – 2.5GW.

The dates for the next auctions will be determined by the Council of Ministers by way of a relevant regulation.

All offshore wind farms will compete within one auction basket. The winners will be producers whose proposals do not exceed 90% of the total installed electric capacity declared in all of the proposals combined.

Entities taking part in auctions must first submit requests for access to the auction system to the President of the Energy Regulatory Office. Requests must include the same documents as required for requests for an administrative decision on the provision of support during the first stage of the support process. However, it will be possible to submit the conditions for connection instead of a network connection agreement.

Improved administrative procedures

The act will make it easier and faster to obtain the relevant administrative decisions (ie, environmental consent decisions, consents for water engineering works and building and use permits). The proposed facilitation measures include:

- a 90-day period for the issuance of said decisions;
- a provision making said decisions immediately enforceable; and
- a 14-day period to examine appeals against said decisions.

In addition to the above, investment projects regarding transmission networks or systems used to derive electric power from offshore wind farms, together with the performance of the relevant construction works, will be considered strategic investments in the area of transmission networks within the meaning of the Act on the Preparation and Implementation of Strategic Investments in the Field of Transmission Networks 2015 (*Journal of Laws of the Republic of Poland* 2018, Item 404 and 2019, Item 630).

Comment

The publication of the Promotion of Electricity Generation in Offshore Wind Farms Act, as well as the EPP 2040 and the NECP, suggest that Poland's energy policy under the Parliament starting its current term of office will focus on stimulating the development of offshore wind farm investment projects. Poland's desire to achieve its renewable energy targets may also translate into, for example, a liberalisation of the regulations which have hindered the development of onshore wind farms since 2016, such as the obligation for onshore wind turbines to be located at a distance equal to at least 10 times their height away from the nearest human settlement, as imposed by the Act of 20

May 2016 on Wind Farm Investments (*Journal of Laws of the Republic of Poland* 2016, Item 961, as amended). The prospect of liberalising this obligation was already signalled by acting Minister of Development Jadwiga Emilewicz during her previous term as minister of entrepreneurship and technology.

For further information on this topic please contact Aleksandra Kolenda or Kamil Zawicki at Kubas Kos Galkowski by telephone (+48 22 206 83 00) or email (aleksandra.kolenda@kkg.pl or kamil.zawicki@kkg.pl). The Kubas Kos Galkowski website can be accessed at www.kkg.pl.

Endnotes

(1) The Polish-language version of the document, valid as of 6 November 2019, together with the annexes thereto, is available [here](#).

(2) The Polish-language version of the document is available [here](#).

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Aleksandra Kolenda Kamil Zawicki