

New draft Promotion of Electricity Generation in Offshore Wind Farms Act published



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Introduction

Following public consultations conducted by the minister of state assets (for further details please see "Draft Promotion of Electricity Generation in Offshore Wind Farms Act"), the Ministry of Climate has published a new version of the draft Promotion of Electricity Generation in Offshore Wind Farms Act. The new draft takes into account some of the comments raised during the public consultations. The Ministry of Climate's assumption of responsibility for the draft act is a result of the entry into force of the Regulation of 20 March 2020 on the Transformation of the Ministry of Climate, under which the organisational units responsible for matters of the Energy Department which were excluded from the Ministry of State Assets were incorporated into the Ministry of Climate.

Definition of 'offshore wind farm' amended

In response to comments made during the public consultations, the definition of an 'offshore wind farm' has been amended. Under the new definition, an 'offshore wind farm' is a separate set of energy generation facilities consisting of one or more offshore wind turbines, together with substations located in the sea and used for the evacuation of power from said offshore wind turbines. This definition aims to avoid interpretative doubts as to the scope of the decision on environmental conditions referred to in Article 71(3) of the Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment, which is required to obtain support. This is because, in practice, it is possible to obtain separate decisions on environmental conditions for offshore wind turbines and other elements of offshore wind farms – in particular, the devices used for power evacuation. According to the new draft act, in order to apply for support, it is unnecessary to submit a decision on environmental conditions for devices used for power evacuation.

Changes to draft provisions concerning support system

The structure of the draft act, as well as the basic shape of the support system, remain largely intact.

It has been indicated that support (in the form of the right to cover the negative balance (ie, the difference between the market price of energy and the price enabling generators to cover the costs of generating electricity at sea)) will be available to generators only in relation to offshore wind farms located within the areas defined in detail in the annex to the act.

The new draft also assumes increasing the amount of electricity generated in offshore wind farms, for which support may be granted during the first phase of the support system. During this phase, support will be granted by way of a decision of the President of the Energy Regulatory Office (ERO). In the first version of the draft act, support could be granted during this phase to wind farms with a total installed capacity of 4600MW. Following the public consultations, the new draft act stipulates that during the first phase, support may be granted to offshore wind farms with a total installed capacity of 5900MW.

The deadline for completing the first phase of the support system has also changed. The December 2019 draft provided that it would end on 31 December 2022, whereas the new draft provides that applications for the right to cover the negative balance may be submitted until 30 June 2021.

According to the original draft, during the second phase of the system, support will be granted through competitive auctions. Notably, the first auction, which was originally scheduled for 2023, will now take place in 2025.

Plans for the supply of materials and services, which generators must submit along with their application for the right to cover the negative balance, will be published by the President of the ERO in the *Public Information Bulletin*. This is important as, in accordance with the new draft, such plans are to contain:

- information on planned dates of key proceedings to select suppliers of materials and services, with an indication of the planned procedure for selecting contractors and the anticipated conditions of participating in the proceedings; and
- the criteria for evaluating offers.

Generators will also have to periodically provide the President of the ERO with a report on the execution of the materials and services supply chain plan. The obligations relating to the development and execution of this plan aim to stimulate the development of the national offshore wind energy services sector.

Other changes

Among other changes, a provision has been included in the draft act to enable generators to apply for an update of the price contained in the President of the ERO's decision granting them the right to cover the negative balance during the first phase of the support system, which will be the basis for settling this balance where:

- a significant change in the material and financial parameters of the construction of the offshore wind farm has occurred, resulting in the need to change or issue a new decision on environmental conditions; or
- the internal rate of return of the investment in the scope of the offshore wind farm has increased by at least one percentage point.

The new draft also specifies the manner in which financial compensation will be granted to a generator where it is not possible to introduce all or part of the electric power generated in an offshore wind farm to the grid as a result of the offshore wind farm being 'redispatched' by the transmission or distribution system operator (within the meaning of Article 2(26) of the EU Regulation on the Internal Market for Electricity (2019/943), not based on market principles.

The procedure under which generators can apply to connect an offshore wind farm to the grid has been clarified. Operators' obligation to issue a promise of connection is a novelty – such a promise will be issued to generators which do not submit a declaration waiving their right to cover the negative balance when applying to connect an offshore wind farm to the grid. At the same time, generators which submit such a declaration will be able to obtain connection conditions if, in addition to an advance payment of the connection fee, they submit financial collateral of Zl60 per kilowatt of connection capacity (similar to generators applying for support).

The new draft also provides for a pre-emption right for a set of devices used for power evacuation from an offshore wind farm to the ownership demarcation point, which will be available to the transmission system operator in case of its disposal by the generator.

Transmission system operators will have to develop technical requirements for the construction of a set of devices used for power evacuation from an offshore wind farm to the ownership demarcation point. The provision which imposes this obligation on operators will enter into force on 30 June 2021.

As regards administrative proceedings, the deadline for issuing a decision on environmental conditions or water, building or occupancy permits has been extended to 60 days in relation to the original project.

Changes have also been made to the procedure for confirming that an offshore wind farm meets the statutory requirements for design, construction, operation and decommissioning. The current version of the draft act provides that compliance with these requirements will be confirmed by a certificate issued by a recognised organisation. Organisations will be authorised to issue these certificates by the minister in charge of the maritime economy. The procedure for performing control activities and issuing certificates by authorised organisations has also been specified.

Intertemporal provisions have been supplemented by indicating that, as a rule, the act will also apply to applications for determining the conditions for connecting offshore wind farms which have not been examined by the date of the act's entry into force (whereby the draft provides for exceptions to this rule).

Comment

The works on the draft Promotion of Electricity Generation in Offshore Wind Farms Act have been delayed due to the COVID-19 pandemic; however, the Ministry of Climate has announced that the act will be passed in Autumn 2020.

According to the draft, most of the act's provisions will enter into force within 14 days of its publication in the *Journal of Laws*. The basic shape of the regulations concerning offshore wind farms, particularly the support system, will already be known when the act is enacted as all key issues are regulated directly in the act. The executive acts will specify the price of electricity for the purpose of settling the right to cover the negative balance and possible auction dates for the second phase of the support system. The act will empower the minister in charge of climate matters to issue a regulation determining:

- the price of electricity generated in offshore wind farms and introduced to the grid (expressed in Polish zloty per 1MWh), providing the basis for settling the right to cover the negative balance (first phase of the support system); and
- the maximum price (expressed in Polish zloty per 1MWh) that may be indicated in the bids submitted by generators in the auction (second phase of the support system).

In addition, under Article 24(6) of the act, which is to enter into force on 1 January 2028, the Council of Ministers will be able to determine by way of a regulation, until 30 April of each year, the maximum installed electrical capacity of offshore wind farms, in relation to which the right to cover the negative balance during the second support phase after 2027 may be granted.

The information concerning the upcoming enactment and entry into force of the regulations governing the operation of and support system for offshore wind farms has been welcomed by the market, as the lack of appropriate regulations to date has prevented investors from implementing offshore wind farm projects. It seems that the Ministry of Climate is keen to introduce the regulations quickly, facilitating the development of offshore wind farms in Poland. This will contribute to the achievement of the targets for the amount of electricity generated from renewable energy sources in the national energy mix.

This keenness may be evidenced by the letter of intent to cooperate on the development of offshore wind energy in Poland signed on 1 July 2020 by representatives of the Ministry of Climate, the Ministry of National Defence, the Ministry of Maritime Economy and Inland Navigation and the Ministry of State Assets, as well as the Polish Wind Energy Association and the Polish Offshore Wind Energy Society. The letter contains strategic guidelines for the development of the offshore wind energy sector in Poland and provides a framework for close cooperation between the government and the offshore wind energy sector.⁽¹⁾ This cooperation will result in the development of the so-called 'Polish offshore sector deal' (ie, the Declaration of Cooperation for the Development of Offshore Wind Energy in Poland by representatives of the government, investors and entities participating in the supply chain for offshore wind energy), which will be similar in nature to the UK sector deal for offshore wind energy.

Notably, the Ministry of Climate has already announced that the offshore wind farm installation port will be located in Gdynia.

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Endnotes

(1) Available in Polish here.

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