

Polish Nuclear Energy - where We are at the beginning of 2025

We still do not know the update of the "Polish Nuclear Power Program," which is expected to be known at the beginning of 2025. According to information provided by the Government Plenipotentiary for Strategic Energy Infrastructure Wojciech Wrochna, the first reactor is expected to begin commercial operation in 2036. Two more units are scheduled to start operating in 2037 and 2038, respectively.

This is a slightly different timeline than the one presented as recently as October in the draft National Energy and Climate Plan to 2030, where the ambitious WAM scenario assumed (which was an ambitious but virtually unrealistic assumption) that the first nuclear power plant unit would be commissioned in 2035, with subsequent units coming starting up in 2036, 2037, 2039, 2041 and 2043 (a total of 6 large-scale units potentially using U.S./French technology). Another two units of Korean production would be built in 2039 and 2041. According to the forecast, the total estimated capacity of all nuclear units (including SMR) will be about 7.4 GW in 2040.

Undoubtedly, the development of nuclear power in Poland is a very important part of the electricity sector transformation. Further publicly available modelling results indicate the indispensability of nuclear power if Poland wants to approach a transition to climate neutrality realistically. Published by the InStrat Foundation in November 2024, the document "Three Decades of Challenges. The "Scenario for Poland's Energy Transition to 2050" shows a demand for nearly 14 GWe of nuclear power by 2050.

At the same time, nuclear power enjoys record public support. According to a survey commissioned by the Ministry of Industry in November 2024, 92.5% of Poles support the construction of nuclear power plants in Poland.

So what about the construction of the first and subsequent nuclear power plants in Poland?

According to information provided by the Government Plenipotentiary for Strategic Energy Infrastructure, the construction site is to be handed over to the contractor in 2025, and construction is to begin in 2028. At the same time, the search for the location of a second nuclear power plant is to begin in 2025, and here "post-coal" sites are being considered.

The goal for 2025 is also to conclude a final contract with the contractors for the first nuclear power plant, i.e. a contract for the construction of the plant (the current contract includes the development of the plant's design). This, in turn, will take place after the European Commission's approval of state aid.

In mid-December 2024, the European Commission issued a decision to open an extended state aid procedure for Poland's first nuclear power plant, at the Lubiatowo-Kopalino site in Pomerania. The support mechanism that Poland included in its proposal envisages the recapitalization of Polskie Elekrownie Jądrowe by the State Treasury, the inclusion of 100 percent of the debt financing in Treasury guarantees and a two-way contract for difference (CfD) for the operation phase. The adopted financing structure assumes a 30% share of equity financing, up to an amount of about PLN 60 billion. The remaining 70% of the financing would come from debt financing, 100% covered by Treasury guarantees. The main source of debt financing is expected to come from export credit agencies, primarily the Export-Import Bank of the United States (EXIM), and other Polish and foreign institutions.

On December 18, 2024, a draft amendment to the Law on Preparation and Implementation of Investments in Nuclear Energy Facilities and Certain Other Laws was published on the website of the Government Legislation Center, which aims to improve the implementation of nuclear investments. The main measure envisaged by the project is the institution of preliminary construction works and related new administrative decisions. In this regard, I refer you to the text by KKG Legal colleague Patrycja Nowakowska, which appeared on the CIRE portal, in which the assumptions of the amendment are discussed.

<https://www.cire.pl/artykuly/brak-kategorii/wstepne-roboty-budowlane--nowa-instytucja-w-projekcie-nowelizacji-specustawy-jadrowej>

Will the Ministry of Industry's announced selection of a partner for the second nuclear power plant under a procedure that is to be competitive in nature mean that the provisions of the Public Procurement Law of September 11, 2019 will apply in this regard? Time will tell. Undoubtedly, in Article 41, the Special Nuclear Law refers to the application of the Public Procurement Law (cf. also <https://www.cire.pl/artykuly/brak-kategorii/sytuacja-prawna-podwykonawcow-przy-budowie-polskiej-elektrowni-jadrowej>).

This is a good time to draw attention, including in the context of nuclear power plants and associated investments, to the recent CJEU judgment of October 22, 2024, in Case C-652/22 (Kolin İnşaat Turizm Sanayi ve Ticaret v. Državna komisija za kontrolu postupaka javne nabave) regarding access to the EU procurement market by foreign, i.e. non-EU, entities. The framework of this paper does not allow for a more extensive discussion of this judgment. However, it should be emphasized that the CJEU judgment was issued on the basis of Directive 2014/25/EU of the European Parliament and of the Council of February 26, 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC. Its key conclusions boil down, among other things, to the thesis that contracting authorities are entitled to restrict access to contracts to contractors from third countries with which the European Union is not bound by any international agreement guaranteeing reciprocal and equal access to the public procurement market, including such contractors may not be allowed to participate in the tender (which, of course, should be reflected in the contract documents). This is a power of the contracting authority, i.e. contracting authorities can restrict such third-country entities from accessing public contracts, but they can also not restrict such access. The remedies brought by third-country contractors cannot be considered in the context of EU law (such contractors are not entitled to invoke EU regulations to defend their rights).

At this point, it is worth pointing out that both the U.S. and South Korea (i.e., the third countries from which the very nuclear technologies mentioned in the NECP originate) are bound to the EU by relevant agreements (while China, for example, has no such agreement). For an up-to-date list of international agreements that guarantee reciprocal and equal access to the public procurement market, see https://single-market-economy.ec.europa.eu/single-market/public-procurement/international-public-procurement/bilateral-relations-non-eu-countries_en.

At the same time, the European Commission has made an additional online tool available to determine whether a third-country contractor is guaranteed access to contracts in EU countries on the basis of international agreements: <https://webgate.ec.europa.eu/procurementbuyers/#/procurementlocation>.

The cited judgment in Case C-652/22, however, does not dispel all doubts. It remains unclear how far contracting authorities can place additional requirements on the participation of third-country contractors, e.g., can they require a certain minimum % of goods from EU countries; what about the situation when a consortium of contractors, some of whom are from third countries, enters the proceedings; or can a third-country entity participate in the proceedings as a capacity provider?

Finally, it is worth pointing out that in addition to working toward large-scale nuclear power, work is also underway on SMR units. Here, in particular, the Polish OSGE and GE Hitachi project should be evaluated as promising and worth watching in 2025. While on SMRs, one should also not overlook the work of the European Industrial Alliance on SMRs, where working groups have been constituted and have already started. KKG Legal is the only law firm in Poland that actively participates in the work of this alliance.

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