



# Quick Guide to the Polish Auction System for Renewables

Onshore wind energy 2024



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# Introduction

Dear Readers,

In November 2023 r. auctions were held to sell energy i.a. from new onshore wind installations. In all auctions, less than 6 TWh (6.8% of the available volume) of electricity worth less than PLN 2 billion (4.8% of the available funds) was contracted. In 2023, all auctions were dedicated to new installations, and according to information from the President of the Energy Regulatory Office, of all winning bids (200), more than 98% are photovoltaic installations (197), the rest are wind installations (3).

Poland, after legislative changes (amendment of the so-called "Distance Act"), has once again become an attractive market for investment in onshore wind energy, which still has huge untapped potential. The total installed capacity from renewables currently amounts to over 29 GW, out of which approximately 32.7% (about 9.5 GW) in wind energy installations (data for February 2024, provided by the Energy Market Agency). In addition, the further liberalization of distance regulations announced by the government, including the reduction of the minimum distance of wind turbines from buildings from 700 to 500 m will enable further dynamic development of new onshore projects.

What is more, according to the amendment to the Act on promoting electricity generation in offshore wind farms adopted in 2023, it is expected that the frequency of auctions and the volumes of offshore wind farms for which the right to a negative balance will be allowed, will be increased. According to the new regulations, auctions would be held in 2025, 2027, 2029 and 2031, and the total maximum installed capacity for which the right to a negative balance can be granted in auctions will be 12 GW.

Europe is currently facing an energy crisis with a variety of economic and geopolitical factors. The most serious of these is Russia's aggressive war against Ukraine, which is connected with challenges in the fuel sector, with gas at the forefront. The above, in the coming months, should promote further decisions by the new government regarding the introduction of investment facilitations, including shortening the time required to prepare the necessary documentation and obtain permits and other administrative decisions necessary for the smooth implementation of investments in renewables.

We have a pleasure to present this guide on the auction system for renewables as a compendium of knowledge prepared by the Polish Wind Energy Association and DWF.

We hope that you will find the guide useful.



Janusz Gajowiecki President of the Board Polish Wind Energy Association



**dr Karol Lasocki** Partner DWF

# The condition of wind energy in Poland

Wind energy constitutes an increasingly vital element of the Polish energy mix. Many indicate that its role in the coming decades will increase further. Full exploitation of the onshore and offshore wind potential will enable in the full transformation of the electricity sector towards zero-carbon.

The National Power System in Poland, with total installed capacity exceeding 66.45 GW, is based primarily on conventional thermal power plants (36.2 GW), nevertheless, the capacity of renewables is growing rapidly (28.8 GW at the end of 2023) and they should become the dominant source (in terms of installed capacity) in the next 2 years. In terms of electricity generation, the electricity sector is dominated by large baseload power plants and CHPs that use fossil fuels. In 2023 their total share in electricity generation reached over 72% and the share of renewables over 27% (wind power alone generated 14% of electricity in this period). However, the oldest power units will be decommissioned soon. In accordance with the cumulated decommissioning scenario presented by the transmission system

operator, it will be necessary to shut down more than 20 GW of generation sources by 2035. This is caused by their age and wear as well as the planned implementation of conclusions introducing the new BAT emissions standards.

The gaps in the system may be filled by renewable energy sources, whose dynamic growth started in 2005 with the introduction of a RES support scheme – the so-called green certificates scheme. Within the last 10 years the renewable sector noted the highest installed capacity growth rates. RES installed capacity currently amounts to over 29 GW, of which approximately 32.7 % in wind (as of February 2024, according to information provided by the Energy Market Agency).





Source: The Energy Regulatory Office

https://www.are.waw.pl/badania-statystyczne/wynikowe-informacje-statystyczne#2023-rok



On 3 February 2024 we experienced a record of electricity production from wind. At that time, wind farms were operating at full capacity and at their peak produced 8465.3 MWh of electricity and over 199 GWh for the entire day, a daily record for wind power generation in Poland.

The year 2016 was the last year when installations built under the green certificates scheme were commissioned. The introduction of the new, auction-based support scheme coincided with adverse changes to the regulatory environment of wind energy, which brought its dynamic growth to a halt. The introduced changes – the so-called 10H principle and the increased tax base for wind turbines – actually precluded the construction of new projects. The situation of existing installations was additionally hindered by the oversupply of green certificates, which resulted in a radical decrease in their market prices, substantially hampering the investments' profitability.

In mid-2018, the industry partially succeeded in breaking the stalemate. The amendment to the RES Act restored the previous taxation rules and paved the way for holding substantial RES auctions for new installations. In the meantime, green certificate prices also increased, improving the financial standing of wind energy investments.

During the auctions held on 22 November 2023 investors obtained aid for the construction of a further 24,5 MW of wind capacity. This value was due to the exhaustion of projects that could participate in the auction, connected with limitations of 10H principle. In addition, it is worth noting that all auctions held in 2023 were characterized by low investor interest, which was certainly due, among other things, to the turmoil in the electricity market and the relatively high prices on TGE S.A.

The minimum price at which energy was sold for onshore wind farms in the November 2023 auction was 119 PLN/MWh, while the maximum was 310 PLN/MWh.

By decision of the European Commission of 30 November 2021, the functioning of the auction support system for producers of energy from renewable sources was extended until 30 June 2047 which means that auctions will be able to be held until 31 December 2027.

This is an extremely valuable change, given the rising price of electricity from conventional sources, whose production is burdened by the high cost of  $CO_2$  emission allowances. In the face of increasing prices of electricity from conventional sources, whose production is subject to high  $CO_2$  emission allowance costs, in November 2023 auctions were held for the sale of renewable energy, including wind and PV (of those decided, one was for installations above 1 MW and one for up to 1 MW).

Moreover, under the Act of 9 March 2023 amending the Act on Investments in Wind Power Plants and certain other acts (Journal of Laws 2023, item 553), the legislator liberalized the 10H rule in order to unblock onshore wind power investments. It should pave the way for the development of new wind projects. The amendment introduced stipulates that the location and construction of wind power plants still takes place under the 10H rule, but a different distance, not less than 700 metres, may be set in the local development plan. According to the explanatory to this amendment, introduction of more flexibility of the rules for locating wind power plants will make it possible to build between 6 GW and 10 GW of new installed capacity by 2032 (depending on the wind energy development scenario). Currently, the installed wind capacity is almost 9.5 GW (as of February 2024, according to information provided by the Energy Market Agency).

This is also crucial in the context of growing interest in the long-term corporate power purchase agreements among industrial customers. The first of such agreements were concluded in Poland at the end of 2018. Representatives of the industry, looking for inexpensive, clean electricity sources and electricity producers seeking investment financing outside the support scheme alike are increasingly willing to use this formula.

Wind farms in operation in Poland are only onshore installations. However, assumptions of the National Energy and Climate Plan (NECP) filed by the Polish government with the European Commission demonstrate that up to 5.9 GW of offshore wind farms will be commissioned in the Polish part of the Baltic Sea by 2030, with offshore wind development gradually increasing to 18 GW by 2040.

It is worth noting at this point that government announcements indicate that work is underway to update key strategic documents in the energy field (including the Energy Policy of Poland until 2040), which aim to increase the emphasis on the development of renewable energy sources and the pace of the energy transition in Poland, which should entail legislative changes to facilitate investment in RES, including wind power.

Particularly significant in this regard may be the announced changes to the location of onshore wind farms. Representatives of the new government have repeatedly announced a return to discussions on the so-called Distance Act and a change in the minimum distance for locating onshore wind farms from buildings from 700 to 500 m.

Integrated national energy and climate plans are becoming an essential tool for achieving the objectives of the energy union. The energy and climate objectives and contributions of the Member States must be consistent with and serve the policies of the European Union. From 15 March 2023 and every two years thereafter, Member States are required to submit a progress report to the European Commission on the implementation of their National Energy and Climate Plans.

The European Commission assesses the plans submitted in terms of their adequacy and ability

to achieve the common goals and objectives of the energy union and any discrepancies.

The Ministry of Climate and Environment has prepared and submitted to the European Commission the first Integrated Energy and Climate Progress Report for 2020–2021. The document was adopted by the European Affairs Committee at its meeting on 18 August 2023. Recommendations will be made on the basis of the reports.

At the beginning of March 2024, Poland submitted a preliminary version of the NECP update to the European Commission. The document declares an increase in the share of RES in gross final energy consumption to 29.8% by 2030. According to the preliminary assumptions, onshore wind power plants with an installed capacity of approximately 15.8 GW and solar power plants with an installed capacity of approximately 29.3 GW will be the largest contributors to the increase in electricity production from RES in the 2030 perspective.

The Energy Policy of Poland until 2040 (PEP2040), adopted by the government in February 2021, assumes the offshore wind power is expected to reach 5.9 GW in 2030 and 11 GW in 2040. According to the announced key assumptions of the third PEP2040 forecast scenario, onshore wind energy is assumed to continue to grow to 14 GW of capacity in 2030 and to 20 GW in 2040.

In March 2022, the government adopted the assumptions for updating PEP2040, which assume that by 2040, approximately half of electricity generation will come from renewable sources. However, the change to the document did not happen. The Ministry of Climate and Environment has announced that an update of PEP2040 will take place later this year (2024).

In the first half of 2021, the Council of Ministers adopted one of the key legal acts for the development of offshore wind energy, i.e. the Regulation of 14 April 2021 on the adoption of a spatial development plan for internal sea waters, territorial sea and exclusive economic zone at a scale of 1:200 000. The plan determines the extent to which the Baltic Sea offshore wind potential will be exploited. The plan covers about 97% of the Polish maritime areas and constitutes a comprehensive regulation of maritime spatial planning. Experts estimate that the actual offshore potential in the Polish Exclusive Economic Zone substantially exceeds the governmental ambitions in that respect – it is estimated at almost 33 GW.

In February 2021, the Act of 17 December 2020 on promoting electricity production from offshore wind

farms was published and came into force, which is a very positive signal for the development of the offshore sector in Poland. The act creates the legal framework for offshore investment implementation, defining the investment support scheme in the form of contract for difference. Thus, the bill offers longterm stability for investors while ensuring competition between companies.

Adoption of this Act was the first step to unlock investments in the Polish offshore sector, which will enable the country to become an important European market for offshore on short notice. Between April and June 2021, the President of Energy Regulatory Office considered all applications and issued a total of seven decisions on granting the right to cover the negative balance for seven wind farm projects in the Baltic Sea (support granted under the so-called phase I in a way of administrative decision).

Until recently, investors had applied for location permits for 11 areas provided for in the Maritime Spatial Plan for Polish Sea Areas. For one of these areas (53.E.1) none of the applicants achieved the qualifying minimum. These are related to the socalled phase II of offshore wind project development in Polish waters of the Baltic Sea. Most of the sites were applied for by a dozen or so investors each. From 2 January to 30 May 2023 the Ministry of Infrastructure published the results of the awarding proceedings for all 11 designated areas indicated in Annex 2 to the Offshore Wind Act. 10 of 11 areas were divided between investors of Orlen Group and PGE Polska Grupa Energetyczna. For one of the sites (53.E.1), none of the applicants reached the qualifying minimum in the criterion of proposed permit durations, including start and completion dates for construction and operation of the project. The entities which obtain a valid location permit will be able to



apply for support for the construction of offshore wind power plants in competitive auctions.

Both the NECP and the PEP2040 provide for ambitious decarbonisation measures after 2030, with less substantial reductions before 2030. Both rely on renewable energy and gas-fired capacity to close gaps left by the phasing-out of coal, but do not fully utilize the potential of wind (particularly onshore) while proposing a nuclear project to be commissioned in 2030–2035.

We believe the potential of wind – onshore & offshore – supported by gas-fired capacity is enough to meet more ambitious targets without the need to further develop a nuclear project. The approach proposed by PWEA would allow the country to: meet the demand for electricity, which is underestimated in the PEP2040, fulfil RES-related targets, reduce CO<sub>2</sub> emissions at a faster pace than it is planned by the Polish government and contain the escalation of electricity costs.

#### **Diagram No. 2** | Modelled development variants of the power generation-storage mix in Poland (GW)



Notes: nJWCDs are a cumulative item that includes coal, gas, biomass and hydro nJWCDs. Storage facilities include ESPs and battery energy storage systems. Lignite, bituminous coal and CCGT include only JWCD units. Hydrogen refers to hydrogen turbines.

Source: Modelling and in-house analysis

# Auctions in 2023

Last RES auctions were held on November 2023. The auction for the photovoltaic and wind installations up to 1 MW was held on 21 November 2023, while on 22 November 2023 was held on auction for installations above 1 MW.

The auctions were carried out on the basis of the Regulation of the Council of Ministers of 27 September 2022 regarding the maximum volumes and values of electricity from renewable energy sources that might be auctioned in particular consecutive calendar years of 2022–2027 (Journal of Laws 2022, item 2085). According to this regulation 11.25 TWh of energy worth PLN 3.825 billion has been allocated for auctions in 2023 for photovoltaic and wind installations up to 1 MW. These values are the same as in 2022. In 2021, a total of 17.4 TWh of energy worth PLN 7.8 billion was allocated for this basket. Meanwhile, for the photovoltaic and wind installations above 1 MW, according to aforementioned regulation, 21.75 TWh worth PLN 6.225 billion was allocated for sale. Similarly, in the same basket for the 2022 auction, the volume of energy amounted to 11.25 TWh worth PLN 3.6 billion.

According to a summary of the auctions held in November 2023, the President of the ERO estimates that the auctions will contribute to nearly 618,5 MW of new generation capacity, including:

- 594 MW in photovoltaic installations (around 123 MW in installations with an installed capacity up to 1 MW and around 471 MW in installations with an installed capacity of more than 1 MW),
- 24,5 MW in wind installations (above 1 MW).



#### Diagram No. 3 | 2023 Auctions. New installed capacity as a result of auctions held in 2023



Last year's auctions allocated around 88 TWh of electricity from renewable energy sources with a total value of around PLN 40.8 billion for sale, but as a result of the auctions, a total of only under 6 TWh (6,8 %) of electricity worth less than PLN 2 billion (4.8 %) was contracted.

### Table No. 1Auction budgets 2023 description for each RES technologyand comparison to year 2022

Technology	Cap.	2023 budget		2022 budget		Change	
		(TWh)	(PLN bn)	(TWh)	(PLN bn)	(%vol.)	(%vol.)
Wind & PV	< 1 MW	11.25	3.83	11.25	3.83	0%	0%
	> 1 MW	21.75	6.23	11.25	3.60	+93%	+73%
Non-agricultural biogas,	< 1 MW	1.11	0.61	1.11	0.61	0%	0%
treatment installations	> 1 MW	45.00	24.71	1.69	0.93	+2567%	+2565%
Agricultural biogas	< 1 MW	-	-	-	-	0%	0%
	> 1MW	5.78	3.87	5.78	3.87	0%	0%
Hydropower, bioliquids,	< 1 MW	0.98	0.51	0.98	0.51	0%	0%
geothermal energy	> 1 MW	2.04	1.04	2.04	1.04	0%	0%
Hybrid installations	< 1 MW	-	-	-	-	-	-
	> 1 MW	-	-	-	-	-	-
Total		87.9	40.78	34.087	14.38	+158%	+184%

Source: own study, pursuant to the Regulation of the Council of Ministers of 27 September 2022 regarding the maximum volumes and values of electricity from renewable energy sources that might be auctioned in particular consecutive calendar years of 2022–2027 (Journal of Laws of 2022, item 2085).

# When did the last auctions take place?

The most recent auctions for onshore wind and PV took place on 21 and 22 December 2023 (respectively for installations up to and above 1 MW capacity).

The auction system is currently the basic support mechanism for RES installations. It was intended to replace the system of certificates of origin, hence as a rule all RES installations in which the first generation of electricity took place (or is to take place) after 1 July 2016 can only benefit from the auction system.

The RES auction system was intended to remain in force until the 2021, but in connection with the Act of 17 September 2021 amending the RES Act and certain other acts (Journal of Laws, item 1873) the auction support system has been extended until 30 June 2047. It means that auctions can be held until 31 December 2027. The above was approved by a decision of the European Commission of 30 November 2021.

This is excellent information for all RES generators. As the Deputy Minister for Climate and Environment at the time Ireneusz Zyska emphasised\*, the European Commission's decision makes it possible to maintain continuity of the main Polish support system for RES generators in compliance with the principles of the internal market of the European Union, which is crucial for ensuring conditions for safe and predictable development of renewable energy sources in Poland. According to preliminary estimates, the extension of the auction system will enable the creation of approximately 9 GW of new capacity in renewable energy technologies. The maximum value of state support during the entire programme period may amount up to PLN 43.85 billion.

\* https://www.gov.pl/web/klimat/komisja-europejska-zgodzila-sie-na-wydluzenie-systemu-aukcyjnego-dla-oze-do-31-grudnia-2027-



# How does a project qualify for participation in an auction?

Ready-to-build RES projects using onshore wind, solar energy and biogas, agricultural biogas, biomass, bioliquids, hydropower and geothermal energy to generate electricity, as well as a thermal waste treatment installations or dedicated multi-fuel combustion installations projects can participate in an auction if they:

- · hold a certificate of admission to an auction, and
- pay a deposit of PLN 60 (ca. EUR 14) per 1 kW, or provide an equivalent bank guarantee.

Obtaining a certificate of admission to an auction is preceded by a pre-qualification procedure carried out by the President of the Energy Regulatory Office. Investors need to evidence that they possess ready-to-build installations, i.e. that the following criteria are met:

- grid connection conditions or an agreement is in place,
- the project has a final and non-appealable
- building permit (valid for at least 6 months),
- an installation scheme is provided,
- a schedule of works and expenditures for the completion of construction is presented.

Once the prequalification criteria are fulfilled, a certificate of admission to an auction is issued within 30 days from the date of submission of a complete application for that certificate by the President of the Energy Regulatory Office. The certificate remains valid for 12 months from the date of issue.



# How does winning an auction impact grid connection?

Grid connection conditions or a concluded grid connection agreement is required for participation in an auction. Grid connection conditions are valid for 2 years from the day of their delivery upon an applicant. In this period they constitute a binding obligation on the part of a grid operator to conclude a grid connection agreement.

A grid connection agreement specifies a period for implementation of a grid connection and contains a deadline for first delivery of electricity produced by a renewables installation. This deadline cannot exceed 4 years from the date of execution of a grid connection agreement. Non-delivery of electricity within the deadline constitutes statutory grounds for termination of a grid connection agreement by a distribution/transmission system operator.

The Polish RES Law, however, provides for a mechanism to extend the deadline for first delivery of electricity for projects which have won an auction. Grid operators are obliged to adjust the deadline in grid connection agreements for the winning projects to be in line with the deadlines from the auction (e.g. for onshore wind – 33 months from the auction closure date). Annexes to grid connection agreements will then be concluded so that the agreements do not expire before the deadline for commissioning of a project.

# What is the course of an auction and who wins?

The date of an auction is announced by the President of the Energy Regulatory Office at least 30 days in advance before the auction.

A bidder – prospective producer submits a bid which includes the volume of electricity in MWh and the price in PLN per 1 MWh, at which the bidder agrees to sell electricity on the basis of a contract for difference. The support is awarded to the lowest bidders. The auction continues until the volume or value of electricity specified in an announcement of an auction is fully depleted or closing of the auction session. The auction shall be resolved if no fewer than three valid bids meeting the requirements set out in the RES Act are submitted. When several bidders offer the same lowest selling price, and the volume of electricity declared to be produced exceeds the volume referred to in the announcement of the auction, the order of submitted bids is decisive. Winning producers' offers may not jointly exceed 100% of the value of electricity specified in the announcement of the auction and 80% of the volume of electricity covered by all bids. This second cap is aimed at guaranteeing sufficiently competitive auctions.

Within 21 days from an auction closure date, the President of the Energy Regulatory Office publicly announces, on its website, information about:

- the results of the auction (i.e. the producers who won the auction, the minimum and maximum price at which electricity was sold in the auction, as well as the total volume of electricity sold and its value), or
- invalidation of an auction, if that happens.

An auction may be invalidated only if all offers have been rejected (an offer shall be rejected, inter alia, if the electricity sales price stated in the offer exceeds the reference price) or if it could not be carried out for technical reasons. If the results of an auction have already been published, the auction is settled and final.

# What is the period of support?



The period of support lasts for 15 years from the date of sale of electricity for the first time after the date of winning a given auction, but no longer than until 30 June 2047. Under previous regulations,

the deadline was 30 June 2039, but the amendment to the Act on Renewable Energy Sources of 17 September 2021 extended the deadline to 30 June 2047.

# What is the mechanism of support?

Industrial-size installations (above 0.5 MW) that have won an auction, sell the produced electricity on the electricity market at the market price, to a chosen offtaker, after which they may apply for additional payments to reach their auction price. This is done by way of an application to cover the "negative balance". The monies are paid out by Zarządca Rozliczeń S.A., a state-owned corporation responsible for carrying out the settlements of the "negative balance". Under the Polish RES Act, the "negative balance" is the difference between the net value of the sale of electricity in a given month (as calculated on the basis of a commodities exchange index) and the value of that electricity determined on the basis of the price contained in a producer's offer that won an auction. Please also note that the latter is indexed annually to the inflation rate in Poland.

The volume of electricity subject to the settlement is determined on the basis of actual indications of measuring devices in a given month. A producer from an installation informs Zarządca Rozliczeń S.A., within 15 days after the end of the month, of:

- the volumes and prices of electricity sold in the previous month,
- data on the value of the electricity (prices published by the Polish Power Exchange – TGeBase index) and
- the producer submits an application to cover the negative balance.

In consequence, the "negative balance" is the difference between the value of produced electricity calculated on the basis of the TGeBase index and the value of such electricity established pursuant to the price from a respective auction bid of an individual producer. Zarządca Rozliczeń S.A. is obliged to verify an application for covering the "negative balance" within 30 days and pay the producer in question the relevant funds, as per the example below.



Please note that in the example the balance can also be positive, especially in case of a substantial increase of wholesale electricity prices. In such a scenario, the producer could be obliged to pay back the positive balance to Zarządca Rozliczeń S.A. Any positive balance is set off against any future negative balance on "as-we-go" monthly basis.

Any positive balance that is not fully settled by the end of a period of every full three calendar years shall be refunded to the Zarządca Rozliczeń S.A. by the generator of electricity in the RES installation, within 6 months of the end of the relevant period.



There is no obligation to sell electricity produced by RES installations through a commodities exchange.

## What energy producing equipment can be installed?



An investor who won an auction is restricted in terms of generating devices that can be installed. The Polish RES Act stipulates that devices used for generating and processing electricity must be new, and produced within a certain period preceding the day of first production of electricity. This is detailed in the table below.

#### Table No. 2

Category of renewable installation	Equipment not older than
Onshore wind	33 months
Photovoltaics	33 months
Offshore wind	72 months
Biomass	42 months

# What are the responsibilities of an investor who won an auction?

The first obligation imposed on an investor is to produce electricity for the first time, while already holding a generation concession, within certain deadlines from the auction closure date. Failure to timely meet this obligation results in an exclusion from the auction system and loss of the deposit. This is detailed in the table below.

#### Table No. 3

Category of renewable installation	Deadline to produce electricity with a concession in place
Onshore wind	33 months from the auction closure date
Photovoltaics	33 months from the auction closure date
Offshore wind	7 years from the auction closure date
Biomass	42 months from the auction closure date



The second obligation is to produce the volume of electricity declared in the offer. However, there is an option of one update of the offer following the auction, with respect to, in particular, the planned date of commencement of the period of use of the support system and the volume of electricity planned for sale in subsequent calendar years (the total volume will however need to remain constant). The volume is settled after the expiry of each 3 full calendar years in which support was granted, and after the lapse of the entire period of support. If an installation fails to produce at least 85% of the volume specified in a winning offer in a relevant settlement period, the producer is subject to a fine. The fine is calculated as 50% of the product of the auction price and the difference between the electricity that was supposed to have been produced, pursuant to the auction offer and the energy actually produced. The financial penalty will not apply if the required volume of electricity was not produced as a result of:

- application of the generally binding law;
- the need to ensure security of the grid;
- a power system failure;
- force majeure, e.g., natural disasters, war, acts of terrorism, riots;
- the technical failure of an installation

   violent, unpredictable and independent of the producer, damage or destruction of an installation or destruction of buildings or facilities essential for its operation.

## The impact of COVID-19 pandemic legislation on the responsibilities of electricity producers within the auction system

Due to the global outbreak of COVID-19 pandemic and subsequent introduction of the state of epidemic in Poland, Polish government adopted a set of legislation aimed at casting off the emerging economic crisis, including the Act of 31 March 2020 on the amendment of the Act on specific measures to prevent, combat and eradicate COVID-19, other transmissible diseases and their associated emergencies.

Also known as Anti-Crisis Shield 1.0, the Act introduced amendments to the RES Act of 20 February 2015. The amendment enabled the RES energy producers benefiting from the auction support system, in the event of specific circumstances caused by the state of epidemic (or the state of epidemic emergency), to apply to the President of the ERO for an extension (by a maximum of 18 months) of the deadline to sell electricity generated in the RES installation for the first time within the auction system



and for an extension of the permissible "age" of equipment included in the RES installations.

Due to the cancellation of the state of epidemic emergency on the basis of the Regulation of the Minister of Health of 14 June 2023 on the cancellation of the state of epidemic emergency in the territory of the Republic of Poland (Journal of Laws of 2023, item 1118), from 1 July 2023 it is no longer possible to obtain such an extension.

Before cancelling the state of epidemic emergency, the President of the Energy Regulatory Office, at the request of a producer, was able to issue a decision to extend the indicated deadlines in case of delays in the implementation of investments in the new RES installations involving a delay:

- in the delivery of equipment that is part of the RES installation;
- in the supply of elements necessary for the construction of the RES installation;
- in the construction of the RES installation and connections to the power grid;
- in carrying out the technical acceptance or start-up of the RES installation;
- in obtaining a concession or entry in the registers specified in the RES Act, caused by the state of epidemic (or the state of epidemic emergency).

In the request, the producer provided, among others, a statement of supplier (or of the producer) confirming that a delay in the delivery of equipment or the start-up of the RES installation was due to the above mentioned circumstances.

All the RES installations that have won the auctions and which have not yet met the deadline for starting the production/sale of electricity in the auction system were able to exercise the right to extend the spoken periods. The right to change the deadline for the first sale of energy and the new right to extend the deadlines due to the COVID-19 pandemic were non-competitive with each other. That means that the producer was able to exercise both these rights together.

In order to fully meet the needs of RES electricity producers, the possibility of extending the above described deadlines was harmonized with respective right concerning the grid connection agreements.

The Anti-Crisis Shield 2.0, i.e. the Act of 16 April 2020 on specific support instruments in relation to the spread of the SARS-CoV-2 virus introduced a regulation, on the basis of which power companies were obliged to adjust in the grid connection agreements the date of the first delivery of electricity from the RES installations to the grid, taking into account the extension of the deadline granted by the President of ERO under the Anti-Crisis Shield 1.0, within 30 days of the day on which the producer informed them of winning the auction.

# The impact of the so-called windfall profits tax on the auction system

In response to the energy crisis, as of 4 November 2022, the Act of 27 October 2022, on Emergency Measures to Curb Electricity Prices and Support Certain Consumers in 2023 and 2024, entered into force (Journal of Laws 2022, item 2243, as amended). The Act has been amended several times.

The act required electricity generators using i.a. wind energy and solar energy for generation, as well as electricity trading companies, to pay a so-called "price cap settlement" to the Fund.

The obligation to pay a price cap settlement to the Fund was exercised for the period from 1 December 2022 to 31 December 2023. Finally, the government didn't decide to extend it over this date.

The Price Difference Payment Fund is a state special purpose fund administered by the minister responsible for energy and managed by the Settlement Administrator (pl: Zarządca Rozliczeń).

The contribution to the Fund was the amount of financial resources that were to be transferred by RES electricity generator and an electricity trading company. Initially, the amount of the contribution to the Fund as the product of the volume of electricity sales and the positive difference of the volumeweighted average market price of electricity sold and the volume-weighted average price limit of electricity sold on a given day.

Subsequently, RES generators were obliged to include in the price cap settlement to the Fund also 97% of revenues from the sale of guarantees of origin, financial instruments and other monetary settlements depending on the volume or value of energy sold. This catalogue thus included, i.a. revenues from so-called virtual power purchase agreements (vPPAs), while the costs of these instruments could not be included.

The price limit for electricity generators and trading companies was determined by the Regulation of the Council of Ministers of 8 November 2022 on the method of calculating the price limit (Journal of Laws 2022, item 2284), differentiating its amount based on the technology of electricity generation. The limits were:

- for electricity generated in installations not covered by the auction system, reference prices, determined by the minister responsible for the climate, in force on the date of calculating the contribution to the Fund, increased by an investment and fixed cost allowance of PLN 50/MWh, i.e.:
  - 390 PLN/MWh for wind installations up to 1 MW;
  - 345 PLN/MWh for wind installations above 1 MW;
- for volumes of electricity generated in installations covered by the auction system, but sold outside the auction, the limit was the price indicated in the auction bid (indexed by CPI).



Despite the termination of the obligations to pay a price cap settlement to the Fund at the end of 2023, it is worth remembering that RES generators in 2024 and 2025 remain liable to report and pay a price cap settlement to the Fund for those amounts due for which the generators received payment after 31 December 2023. In addition, in 2025, generators should submit a declaration that they have fulfilled their obligations to provide a price cap settlement to the Fund, together with the relevant settlement report.

# How is the financing of the auction system secured?

Funds in the auction system are required for the payment of the "negative balance" and the functioning of the entity covering the balance Zarządca Rozliczeń S.A. They are secured via a renewables fee. The renewables fee is collected by distribution system operators ("DSO"). DSOs collect the renewables fee predominantly from final off-takers interconnected directly to their grid, i.e. mainly households. Therefore, financing of the auction system is not influenced by the government budget. The rules for calculating the renewables fee by DSOs are set forth in the respective statute. DSOs calculate it as a product of the renewables fee rate and the sum of electricity consumed. The renewables fee rate is published in the bulletin of the President of the ERO until 30 November of each calendar year.



## What is the risk of the state evading its responsibilities following an auction?

Although no written agreement is entered into between Zarządca Rozliczeń S.A. and the auction winner, the legal relationship between such a producer and the Polish state takes the form of a binding obligation, by statutory law. The elements of this obligation are construed on the basis of the Polish RES Act and documents published by the President of the Energy Regulatory Office – published auction results. In consequence, if Zarządca Rozliczeń S.A. fails to pay a due amount of money, a producer can enforce its rights in a common court. A producer can also be protected by bilateral investment treaties or the Energy Charter Treaty, providing for investment arbitration outside Poland, provided that the investment is adequately structured in advance. It's worth mentioning, that this arrangement is deemed sufficient to bank financing on a non-recourse basis (project finance).



## Is it possible to transfer the rights and obligations acquired at an auction?

Under the Polish RES Act, it is admissible to either acquire a project which won an auction or acquire shares in a company holding such a project. In the former case, it is necessary to apply to the President of the Energy Regulatory Office for consent. Granting of such consent is dependent on a statement by a buyer, which should include a declaration by the buyer that electricity will be produced purely from renewables, in the installation related to the auction and that the buyer accepts the rights and obligations of a RES producer.



# Summary of the selected 2023 auctions

The last auctions for wind and solar projects took place in November 2023. All auctions were for new installations. Of the seven auctions held, only two were resolved.

The volume of electricity in the auction for small photovoltaic and wind installations with capacity up to 1 MW was set at 11.25 TWh with a value of over nearly PLN 3.825 billion. The reference price in this basket for wind installations was 378 PLN/MWh, while for photovoltaic installations – 414 PLN/MWh.

PV projects dominated the so-called "small basket" for wind and photovoltaic projects up to 1 MW.

80 producers joined the auction, placing a total of 163 bids, and all the bids were submitted by PV producers only.

As a result of resolving the auctions, 14% of the energy volume was sold within 133 offers submitted by 56 generators, with the total value of only PLN 413 million (which constitutes under 11% of the value of energy allocated for sale).

The minimum price at which energy was sold was 284.95 PLN/MWh (for comparison, back in December 2022 the minimum price at which energy was sold was 244.77 PLN/MWh). On the other hand,



the maximum price at which energy was sold was 355 PLN/MWh (for comparison: in December 2022 it was 327.73 PLN/MWh).

As a result of the auction, over 1.2 TWh were contracted.

The winners included RWE Renewables Poland sp. z o.o., Pro Vento Capital FIZ AN, Doral Energy Poland sp. z o.o., Projekt Solartechnik S.A. or Sun Contracting Poland sp. z o.o.

In the auction for wind and photovoltaic projects with a capacity above 1 MW, the possible amount of energy to be sold in the basket was 21.75 TWh and its value was over PLN 6.225 billion.

The maximum price (i.e. reference price), which could be placed in the offer for wind installations with capacity above 1 MW, amounted to 324 PLN/MWh, and for PV installations – 389 PLN/MWh. The auction was joined by 63 producers, who submitted 85 bids in total. As a result of the auction slightly over 4.74 TWh of energy of total value exceeding 1.5 billion was sold. As a result of the auction, photovoltaic installations with the capacity of slightly over 471 MW and onshore wind farms with the capacity of 24.5 MW may be created. Minimum price at which the energy was sold in this auction basket was 119.00 PLN/MWh, while the maximum price was 349.69 PLN/MWh.

The winners included i.a. . Polenergia S.A., RWE Renewables Poland sp. z o.o., EDP Renewables Polska sp. z o.o., PL-Sun sp. z o.o., Eurowind Energy A/S, Projekt Solartechnik S.A., Lion Energy Group II sp. z o.o. or Pro Vento Capital FIZ AN.

#### **Diagram No. 4** | 2023 auction. New installed capacity as a result of auctions held in 2023



## Reference prices (maximum bid prices) for different categories of renewables for 2023

Below are the reference prices resulting from the regulation of the Minister of Climate and Environment of 8 November 2023 on the reference price of electricity from renewable energy sources, the periods applicable to producers that won the auctions and the reference volumes of electricity sales (Journal of Laws, item 2247). At the time of publication of the guide, the reference prices for the 2024 auctions have not yet been announced.

#### Table No. 4

No.	Type of renewables installations	Reference price (PLN/MWh)
1.	Installations with a capacity below 0.5 MW usi agricultural biogas	ng only 872
2.	Installations with a capacity below 0.5 MW usi agricultural biogas in high-efficiency cogenera	ng only 1025 tion
3.	Installations with a capacity below 0.5 MW usi biogas obtained from landfills	ng only 812
4.	Installations with a capacity below 0.5 MW using only biogas obtained from landfills in high-efficiency cogeneration	915
5.	Installations with a capacity below 0.5 MW usi biogas obtained from sewage treatment plant	ng only 572 s
6.	Installations with a capacity below 0.5 MW usi biogas obtained from sewage treatment plant high-efficiency cogeneration	ng only s in 714
7.	Installations with a capacity below 0.5 MW usi only biogas other than obtained from agricult biogas, landfills or sewage treatment plants	ng ural 632
8.	Installations with a capacity below 0.5 MW usi only biogas other than obtained from agricult biogas, landfills or sewage treatment plants in high-efficiency cogeneration	ng ural 723
9.	Installations with a capacity below 0.5 MW using only hydropower	853
10.	Installations with a capacity not below 0.5 MW	and 793



No.	Type of renewables installations	Reference (PLN/N	price 1Wh)
11.	Installations with a capacity not below 0.5 MW not exceeding 1 MW using only agricultural bio high-efficiency cogeneration	and ogas in	941
12.	Large Installations (above 1 MW) using only agricultural biogas		775
13.	Large Installations (above 1 MW) using only agricultural biogas in high-efficiency cogeneration	tion	896
14.	Installations with a capacity not below 0.5 MW only biogas obtained from landfills	using	785
15.	Installations with a capacity not below 0.5 MW only biogas obtained from landfills in high-efficiency cogeneration	using	895
16.	Installations with a capacity not below 0.5 MW using only biogas obtained from wastewater treatment plants		520
17.	Installations with a capacity not below 0.5 MW only biogas obtained from wastewater treatme plants in high-efficiency cogeneration	using ent	663
18.	Installations with a capacity not below 0.5 MW only biogas other than obtained from agricultu biogas landfills or sewage treatment plants	using ural	583
19.	Installations with a capacity not below 0.5 MW only biogas other than obtained from agricultu biogas landfills or sewage treatment plants in high-efficiency cogeneration	using ural	677

No.	Type of renewables installations	Reference price (PLN/MWh)
20.	Dedicated biomass combustion installations on hybrid systems	r 594
21.	Thermal waste treatment installations or dedi multi-fuel combustion installations	cated 474
22.	Installations with a capacity not exceeding 50 a dedicated biomass combustion installation of systems, in high-efficiency cogeneration	MW in or hybrid 670
23.	Installations with a capacity higher than 50 MV a dedicated biomass combustion installation of systems, in high-efficiency cogeneration	V in or hybrid 640
24.	Installations using only bio-liquids	575
25.	Installations with a capacity not exceeding 1 M only onshore wind energy	IW using 378
26.	Large Installations (capacity higher than 1 MW only onshore wind energy	) using 324
27.	Installations with a capacity of not below 0.5 M not exceeding 1 MW using only hydropower	1W and 778
28.	Large Installations using only hydropower	745
29.	Installations using only geothermal energy	579
30.	Installations with a capacity not exceeding 1 M only solar energy	IW using 414
31.	Large Installations (capacity higher than 1 MW only solar energy	) using 389

# E PSEW

The Polish Photovoltaic Association (PPA) is a newly established non-governmental organization aiming to support the development of large-scale solar energy in Poland as a clean energy source. The Association works to increase political and social awareness in the field of photovoltaics, and also supports the creation of an appropriate regulatory environment for this dynamically developing sector in Poland.

Main areas of the PPA activity are:

- Support of the development of large-scale photovoltaic projects
- Participation in consultations of various energy regulations, direct cooperation with public energy entities and taking action to implement new legal regulations fostering the development of PV in Poland
- · Promotion of solar energy and knowledge about this technology
- Increasing social and political awareness about solar energy
- Creation of opportunities to share experiences, establish new business relationships, joint substantive work as well as workshops and seminars

Polish Photovoltaics Association is a member of the SolarPower Europe.

www.psew.pl/en/



DWF in Poland currently consists of over 160 professionals. As a team, we have been providing legal services in Poland since 1991.

Our lawyers have extensive experience in providing comprehensive legal services for private companies, international corporations and state-owned entities. Our achievements are widely recognized by our clients, peers and market participants as well as leading international rankings.

The Warsaw office key practices include renewable energy, environment, mergers and acquisitions, project finance, real estate, construction and infrastructure, capital markets, banking, finance and restructuring, intellectual property, dispute resolution, tax and employment, as well as public procurement.

We are a legal business focused on complicated, precedent-setting, unique cases and transactions. This requires knowledge, experience, skills and the ability to act fast. We are proud of our participation in the biggest and most complex disputes and transactions on the Polish and European markets. We also offer our clients specialized expertise in sectors such as conventional and innovative energy, industrials, nuclear power, mining, transport, aviation, aerospace and defence, the film industry, media, TMT and outsourcing.

Our lawyers are regularly recommended by independent international rankings, such as Chambers Global, Chambers Europe, Legal 500, IFLR1000 as well as WTR100 and Managing IP. Our lawyers actively participate as speakers at key sector conferences, seminars and workshops on, inter alia, environmental, energy, construction, litigation and arbitration law issues.

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Our Warsaw Office has a distinctive, full-size, comprehensive practice devoted entirely to renewable energy. It is one of the most recognized RES practices on the Polish market, and a one-stop-shop for clients active in renewables.

We assist in all legal matters related to the RES sector, including investments (development, permitting and licences, grid connections, transactions, environmental issues, M&A), day-to-day operations, as well as disputes. We have been involved in acquisitions and development of a vast number of solar and wind projects, both onshore and offshore. The team is also renowned for advice in regulatory and legislative matters.

We assist sector chambers and organizations, as well as individual clients, in solving complex regulatory matters and building their position on sectoral issues. For example, we support clients in a number of energy regulatory disputes before the President of the Energy Regulatory Office and courts. We assist the Polish Photovoltaics Association and the Polish Wind Energy Association, strengthening the organizations' efforts with respect to issues concerning the support scheme for renewables in Poland and the EU. We are also involved in works of the Offshore Taskforce of the Polish Wind Energy Association in which we help to work out proposals for the regulatory environment for offshore wind.





Karol Lasocki Partner E karol.lasocki@dwf.law



Przemysław Bugnacki Associate E przemyslaw.bugnacki@dwf.law



Andrzej Lenart Junior Associate E andrzej.lenart@dwf.law



Aleksandra Nowak Associate E aleksandra.nowak@dwf.law



Agnieszka Chylińska Counsel E agnieszka.chylinska@dwf.law



Wiktoria Rogaska Local Partner E wiktoria.rogaska@dwf.law



Joanna Derlikiewicz Associate E joanna.derlikiewicz@dwf.law



Maria Kierska Counsel E maria.kierska@dwf.law



Paulina Stachura Senior Associate E paulina.stachura@dwf.law

### **PSEW**



Janusz Gajowiecki President of Polish Wind Energy Association E j.gajowiecki@psew.pl



Piotr Czopek Regulatory Director E p.czopek@psew.pl



Małgorzata Żmijewska-Kukiełka Communication Manager E m.zmijewska@psew.pl



Katarzyna Matuszczak Development and Environment Manager E k.matuszczak@psew.pl



Iwona Głoćko Administrative Director E i.glocko@psew.pl



Oliwia Mróz-Malik Offshore Wind and Development Manager E o.mroz@psew.pl



Dorota Bereza Marketing & Events Director E d.bereza@psew.pl



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