

# New Draft Act on Renewable Energy Sources

On 5 October 2012, the Ministry of the Economy (the "**ME**") announced a new version of the draft Act on Renewable Energy Sources (the "**New Draft**"). This introduces several changes to the previous draft law announced on 27 July 2012 (the "**Previous Draft**"). Below please find a short summary of the ME's new proposal.

## Key issues

- Mandatory purchase of electrical energy from RES
- Corrective coefficients
- Change of the list of entities
- Limitation of income from the sale of certificates of origin
- RES payment (*opłata OZE*)

## Mandatory purchase of electrical energy from RES

Under the New Draft, a significant element of the RES support system – the obligation to purchase electrical energy and gaseous fuels from renewable energy sources at a regulated purchase price – has been retained. However, under the New Draft, this obligation is imposed on a "responsible supplier" (*sprzedawca zobowiązany*) instead of the supplier of last resort (*sprzedawca z urzędu*) which is currently responsible for such purchases.

Under the New Draft, a responsible seller is a seller of electrical energy who supplies electrical energy to the largest number of final off-takers of that electrical energy (not only household off-takers, as was the case with supplier of last resort), with respect to the number of final off-takers of electrical energy connected to the distribution or transmission grid of a given power distribution system, in its area of activity, as at 30 September of the preceding year. If there are two or more sellers with the same number of final off-takers of electrical energy, the seller with the largest volume of sales of electrical energy to final off-takers in the first half of the preceding year will be the responsible seller.

The purchase obligation has been shaped differently for: (i) micro-installations and small installations (e.g. onshore wind power plants with a total electrical energy capacity not exceeding 100 kW, photovoltaic power plants with a capacity not exceeding 100 kW, etc.) and (ii) other RES (i.e. wind power plants with a total electrical energy capacity above 100 kW, photovoltaic power plants with a capacity above 100 kW, etc.).

As regards the first group, energy will be purchased at a fixed, constant price in force at the time the relevant RES installation is delivered for use (the so called: feed-in tariff). This price will be determined in an ordinance of the Minister of Economy announced by 30 September of each calendar year and will be binding for the subsequent calendar year. The energy purchase price will depend on the amount of the total installed capacity of the RES. However, it may not be lower than: (i) the electrical energy purchase price determined for other RES mentioned in point (ii) above, and (ii) the equivalent of the substitute fee, adjusted by the minimum corrective coefficient in effect in the relevant calendar year for the relevant type of production of electrical energy in RES installations. The purchase obligation for the first group of RES will arise as of the date the electrical energy is introduced to the grid and will last for the following 15 years, but until 31 December 2027 at the latest.

As regards the second group of RES, as in the case of the Previous Draft, the mandatory purchase of energy will be made at the average selling price for electrical energy in the competitive market in 2011, which was PLN 198.90/MWh, adjusted by the annual consumer price index. However, the price may not exceed the average selling price on the competitive market for a given year. The new solution introduced in the New Draft is that the mandatory purchase obligation will arise as of the date the electrical energy is introduced to the grid and will last for the next 15 years, but no later than 31 December 2035 (in the Previous Draft, the mandatory purchase obligation was not limited in time). The mandatory purchase obligation also applies to electrical energy produced during start-up trials.

## Corrective coefficients

In the New Draft, the ME has retained the rule introduced in the first draft of the Act on RES (in December 2011) on differentiation of the level of support for individual renewable energy production technologies. The level of support will continue to be based on the mechanism of corrective coefficients (on which the value of a certificate of origin for the relevant production technology will depend).

As proposed in the Previous Draft, the corrective coefficients will continue to be subject to verification (they will be determined by the Minister of the Economy every three years for a period of five consecutive years) and one constant corrective coefficient will apply to a given installation. Each RES installation will receive a certificate of origin together with a corrective coefficient determined at a constant level. The constant corrective coefficients will be determined for a period of 15 consecutive years, from the date on which the installation is delivered for use, but no later than 31 December 2035.<sup>1</sup>

This limitation of the support system means that with respect to RES installations delivered for use after 31 December 2020, the support system will be gradually shortened.

Furthermore, under the New Draft, a separate corrective coefficient will be determined for a RES during start-up trials (in accordance with the corrective coefficient binding on the first date of the start-up).

In the New Draft, the first corrective coefficients are not specified, but they are to be specified in the Act introducing the new Energy Law, a new Gas Law and the Act on RES (the "**three pack**"), which has not yet been published. In the justification to the New Draft the corrective coefficients for years 2013-2014 have been specified. As regards subsequent years the corrective coefficients were not set out. However, the regressive rates for years 2015-2017 were specified. For example, in the case of wind farms, the following corrective coefficients and regressive rates have been proposed:

RES Category	Corrective coefficient 2013-2014	Regressive rate 2015-2017
Wind (land based) 100–500 kW	1.20	-2.0%
Wind (land based) > 500 kW	0.90	- 2.5%
Wind (off shore)	1.80	0.0%

### Change of the list of entities

The New Draft expands the groups of entities which are obliged to obtain certificates of origin for electrical energy produced from RES and submit them for redemption or pay a substitute fee. Under the New Draft, industrial off-takers which used no less than 100 GWh of electrical energy in the year preceding the year in which the obligation is implemented and for which the costs of electrical energy acquisition amount to no less than 3% of their production will be also be subject to this obligation.

### Limitation of income from the sale of certificates of origin

The controversial regulation presented in the Previous Draft (Art. 41 sec. 3) has been slightly amended. Under the modified provision (Art. 61 sec. 2 of the New Act) "*if the sale of electrical energy or gas fuel produced from renewable energy sources in a renewable energy source plant interconnected to a distribution or transmission grid or network located in an area where that responsible supplier operates and offered by an energy enterprise is made at a price higher than 105% of the purchase*

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<sup>1</sup> An exception from this rule will be support for multi-fuel firing installations, which will be entitled to certificates of origin, together with a corrective coefficient determined at a fixed level, for a period of 5 consecutive years, however, not longer than until 31 December 2020.

*price referred to in Art. 58 [of the New Draft], a certificate or origin for electrical energy sold at higher price should not be issued."*

It seems that the ME decided to retain the limit on income of producers of energy from RES originating from the sale of certificates of origin where the energy is sold at a price higher than the regulated price determined for purchase by responsible suppliers and proposed in the Previous Draft. The wording of this provision has been changed, and now there will be no right to certificates of origin for that part of the energy which is sold at a price exceeding 105% of the regulated price.

### **RES payment (*opłata OZE*)**

The New Draft provides for a RES payment which is to be paid by final off-takers through DSOs or directly - by off-takers connected to the transmission grid. The RES payment constitutes remuneration payable to transmission system operators for the transmission of electrical energy produced in micro-installations and small installations. The RES payment depends on the consumption of electrical energy by a given off-taker and is calculated based on a formula set out in the New Draft. The RES payment is to be collected by 31 December 2028 at the latest.

The ME announced that the New Draft will be the last version of the Act on RES to be prepared by the ME. The New Draft has been sent to the relevant committee for consultation, and is subsequently to be sent to the Council of Ministers and then to the Polish Parliament. Because new solutions may be introduced at further stages of the implementation of the Act on RES, these proposals may undergo significant amendment. However, the ME believes that the Act on RES should come into force by the beginning of next year.

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