

POLAND WANTS TO ACHIEVE EU 2020 RENEWABLE ENERGY TARGETS

– THE MINISTER OF ENERGY PUBLISHED A DRAFT AMENDMENT TO THE RES ACT TO MAKE IT POSSIBLE. HOWEVER, NOT ALL RES ENERGY PRODUCERS WILL BE SATISFIED.

As previously announced, the Ministry of Energy prepared a draft amendment to the Act on Renewable Energy Sources (hereinafter “RES Act”) – on 28 February 2019 the draft was published and submitted for public consultation. The intention of the draft initiators is to allow for conducting auctions for new RES projects with a total installed capacity above 3.4 GW (including 2.5 GW for new wind farms and 750 MW for new solar farms) still in 2019. Assuming that all new installations to win this year’s auction start generating energy before the end of 2020, Poland might achieve the EU 2020 targets at the very last moment, by bridging the investment gap of the last several years.

The draft amendment to the RES Act also proposes further, highly controversial changes to the functioning of the green certificate scheme.

First, the good news – the draft amendment to the RES Act (hereinafter “**Draft**”) is the first official announcement of what is to be the greatest in history RES auction to be conducted still in 2019. The ambitious proposal of the government is a response to the conclusion of the 2018 audit by the Polish Supreme Audit Office (NIK)¹ on the development of the renewable energy sources sector in Poland. NIK’s inspection report blamed the government for multiple shortcomings and failures to act, which had led to a slowdown of investments in the RES sector and may lead to Poland not achieving the EU 2020 target of the required minimum 15% share of RES energy in the total gross energy consumption.

Key issue:

- Proposals contained in the Draft amendment – RES auctions
- *Proposed volumes for RES auctions in 2019*
- *Proposed modifications to the auction system structure*
- Proposals contained in the draft amendment – green certificates scheme
- *Proposed new substitution fee*
- *Changes with delayed impact*
- *Level of green certificates redemption obligation in 2020*

¹ The Supreme Audit Office report Rozwój sektora odnawialnych źródeł energii [Development of the renewable energy sources sector] <https://www.nik.gov.pl/plik/id,18357.vp,20955.pdf>

However, there are some bad news, too, regarding the existing RES installations functioning under the green certificate scheme. The Draft proposals are another attempt to intervene with the functioning of the green certificates scheme, albeit not the kind of intervention the investors and banks financing the projects were expecting. For fear of excessive increase in prices of electricity and green certificates, and fear of the risk of an increase in the maintenance costs of the support system, the Ministry of Energy aims to reduce the total income of the investors. It does not, however, offer solutions which could guarantee the minimum price of green certificates. The Draft amendment also presents no attempt to address the issue of oversupply of green certificates.

Proposals contained in the Draft amendment – RES auctions

Proposed volumes for RES auctions in 2019.

The Draft provides for the organisation of auctions both for new projects and several migration auctions for existing RES installations.

Particular attention should be given to auctions in the basket of new onshore wind projects and photovoltaic (PV) installations.

The Draft provides that in case of auctions for installations with a capacity not greater than 1 MW (mostly dedicated to PV), the allocated volume will stand at approximately 11.5 million MWh and its value will exceed PLN 4.2 billion. (It should be noted that the volume for 2018 auctions amounted to just over 16 million MWh, without having been fully used up.) According to the explanatory memorandum of the Draft, this should ensure that new PV installations with a total capacity of approx. 750 MW are built.

However, most of the capacity is to be contracted for wind installations with a total capacity above 1 MW. The proposed volume is to stand at 91.47 million MWh, with the value of PLN 26 billion. For comparison, in 2018 the auction volume for this category of producers amounted to 45 million MWh and its value was PLN 15.75 billion. This more than twofold increase in the volume provides a great opportunity to receive support for most wind farm projects, which currently have the ready-to-build status.²

Comparison of auction volumes for wind and PV projects in 2018 and 2019

Installation type	2018		2019	
	Volume of energy [MWh]	Value [PLN]	Volume of energy [MWh]	Value [PLN]
PV ³	16 065 000	6 243 300 000	11 445 000	4 213 650 000
Wind ⁴	45 000 000	15 750 000 000	91 470 000	26 164 500 000

Proposed RES auctions to take place in 2019:

PV (\leq 1MW) - **11,5 mln MWh**, maximum value **4,2 mld PLN** (ca. 750 MW installed capacity)

Onshore wind (>1MW) - **91,47 mln MWh**, maximum value exceeding **26 mld PLN** (ca. 2500 MW installed capacity)

Biomass (>1MW) - **14,91 mln MWh**, maximum value exceeding **5,5 mld PLN** (ca. 110 MW installed capacity)

Agricultural biogas - **1,17 mln MWh**, maximum value exceeding **678 mln PLN** (ca. 30 MW installed capacity)

Hydroenergy - **0,6 mln MWh**, maximum value exceeding **285 mln PLN** (ca. 14 MW installed capacity)

² According to different data published, the total connection capacity of wind farm projects with connection contracts already signed and building permits granted varies from 3.5 to 4 GW.

³ Basket for installations with a capacity under 1 MW

⁴ Basket for installations with a capacity above 1 MW

The Draft amendment also provides for the organisation of auctions for new biogas- biomass- or waste-fuelled installations with a capacity above 1 MW. The energy volume for this basket will amount to **14.91 million MWh**, with a value of more than **PLN 5.5 billion**.

Smaller auctions will also be organised for new installations utilising agricultural biogas (the auction volume will amount to **1.17 million MWh**, with a value of slightly more than **PLN 678 million**) and for installations utilising bioliquids, geothermal energy and hydropower (in this case the auction volume will amount to almost **0.6 million MWh**, with a value of more than **PLN 285 million**).

Interestingly, the aim of the Draft's authors is to contract a much higher energy volume, while significantly decreasing the public aid for this purpose, as compared to the auctions held in 2018:

	2019	2018	2019/2018 difference
Maximum energy volume allocated for sale	145 748 400 MWh	131 136 000 MWh	14 612 400 MWh
Maximum value of sale	PLN 45 605 550 000	PLN 53 529 135 000	PLN -7 923 585 000
Average value of sale in PLN/MWh	312,90 zł/MWh	408,20 zł/MWh	-95,3 zł/MWh
Maximum value of public aid	PLN 13 832 398 800	PLN 31 275 355 800	PLN -17 442 957 000
Average value of public aid in PLN/MWh	94,90 zł/MWh	238,50 zł/MWh	-143,60 zł/MWh

Proposed modifications to the auction system structure

The Draft provides for several important changes to the auction system structure, with account taken of some of the comments from the RES sector over the recent months. These include, but are not limited to:

- Introducing the possibility of a one-off update of a bid as regards the allocation of energy volumes between the different years specified in the bid and as regards the installed capacity.
- Increasing the possible age of equipment to be used in new RES installations and the period for the sale of energy for the first time after the auction closure from 36 to 42 months (this period concerns RES installations other than PV and wind installations; for PV and wind installations, the deadline for the commencement of the sale of energy after the auction will remain the same, i.e. 18 and 24 months, respectively).
- Removing the requirement to submit an environmental impact assessment during the prequalification procedure.

- Modifying the rules for the settlement of the positive balance by reducing the value of any positive balance to be returned to the value of the negative balance paid to the producer.
- Removing the exchange obligation as regards already operating RES installations for electricity producers who plan to participate in auctions for new installations.
- Extending until 30 June 2039 the maximum permissible period within which it is possible to use support in the form of the right to cover the negative balance.
- Introducing regulations providing that the final deadline of first delivery of electricity to the grid specified in the connection agreement cannot be earlier than on 1 January 2020 and cannot be later than on 31 January 2020.

The Draft does not stipulate any detailed dates for the organisation of auctions in 2019, but it requires that the dates must be agreed upon by the President of the Energy Regulatory Office with the Minister of Energy.

The Draft does not provide for interim provisions, therefore questions may arise as to the applicability of the proposed changes to RES installations that won auctions in the previous years. The Draft also does not address other issues important for the RES sector, which have been raised by the sector participants, in particular the so-called 'minimum distance requirement' which applies to onshore wind farm projects, and which blocks further development of the sector.

Proposals contained in the draft amendment – green certificates scheme

Proposed new substitution fee

Probably "alarmed" by growing prices of green certificates in 2018, the Ministry of Energy is proposing solutions aimed at counteracting the rise of Green Certificates' prices and consequently, electricity prices paid by end off-takers.

The project promoters propose to link electricity prices to the substitution fee which is in principle to play the role of ceiling for green certificate prices. Following the amendment, the level of the substitution fee, which currently depends on the average green certificate prices in the previous year⁵, is to be in inverse proportion to the price of electricity on the wholesale market. The Draft authors thus wish to avoid a situation leading to "excessive support" to investors and to an increase in the costs of the support scheme, which are then transferred onto customers.

According to the proposed formula, following the amendment, the unit substitution fee is to be the difference between 85% of the average reference prices for all technologies applicable in 2018⁶ weighted by the installed capacity of these technologies as at 30 June 2016⁷ and the average annual

⁵ Following the amendment in 2017, the unit substitution fee (earlier equal to PLN 300.03 for 1 MWh) was fixed at 125% of the annual weighted average price of green certificates in the previous year with a ceiling of PLN 300.03 for 1 MWh.

⁶ Reference prices for various RES technologies applicable in 2018 were defined in the Act of 7 June 2018 Amending the RES Act (Journal of Law no. 2018.1276 dated 2018.06.29)

⁷ i.e. as at the date of actual closure of the possibility to access the green certificates scheme.

sale price of electricity on the competitive market in the previous year published by the President of the Energy Regulatory Office.

Average of reference prices for all technologies in force in 2018 weighted by the installed capacity of these technologies as at 30 June 2016 is a fixed value equal to PLN 367.15/MWh. 85% of that value corresponds to PLN 312.08/MWh and, as intended by the Draft authors, this value is to be the maximum revenue achievable from the generation of electricity from RES within the framework of the green certificates scheme. This is based on the assumption that RES electricity generators sell it at a price no higher than the average price on the competitive market and that the prices of green certificates will be below the level of the substitution fee (as the Draft authors expect). The Draft does not provide for any indexation of this value.

The authors of the Draft do not explain why they judged that the reference prices applicable in 2018 are to be the appropriate benchmark for defining the maximum revenue of producers of RES electricity or how the correction coefficient of 85% had been established.

Inserting the forecast average annual price for 2018, equal to PLN 194.70/MWh, into the equation⁸ gives a unit substitution fee of PLN 117.37/MWh. The substitution fee thus calculated would be a benchmark for the prices of green certificates on the market.

Changes with delayed impact

According to the Draft, the new substitution fee calculation formula would come into force as of 1 January of the year following the date of obtaining the European Commission's approval for introducing amendments to the aid scheme or the announcement of a positive decision on compatibility of aid with internal market. Thus, the Draft authors considered that introducing amendments to the substitution fee constitutes an interference in the RES support scheme accepted by the European Commission. (The Polish legislator arrived at different conclusions and introduced an amendment to the substitution fee making it dependant on average market prices of green certificates).

Level of green certificates redemption obligation in 2020

The Draft proposes to set out the levels of obligatory redemption of certificate of origin of electricity for 2020. In compliance with the Draft, the obligation to redeem green certificates in 2020 is to be set at the level of 19.5% and for those known as blue certificates (confirming production of electricity from agricultural biogas) at the level of 0.5%.

As set out in the explanatory memorandum of the Draft, indicating a short-term perspective for anticipating the redemption of certificates of origin is to enable entities obliged to redeem certificates to plan purchasing certificates at competitive prices. This is to lead to an effective decrease of the cost of the support scheme being laid upon end customers.

⁸ This is the estimated electricity selling price on the wholesale market in 2018 (average electricity selling price on the wholesale market in 2018 will be published by the President of the Energy Regulatory Office by the end of March 2019).

CONTACTS

Agnieszka Janicka
Partner

T + +48 22 627 11 77
E agnieszka.janicka
@cliffordchance.com

Paweł Puacz
Counsel

T + +48 22 627 11 77
E pawel.puacz
@cliffordchance.com

Weronika Miszewska
Associate

T + +48 22 627 11 77
E weronika.miszewska
@cliffordchance.com

Adrian Król
Associate

T + +48 22 627 11 77
E adrian.krol
@cliffordchance.com

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www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660
Warsaw, Poland

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