



10H distancing rule liberalisation

I. The Polish government has approved an act loosening the distancing rules for onshore wind farms

On 5 July 2022, the Council of Ministers adopted a draft amendment to the act on investments in wind farms, prepared by the Minister of Climate and Environment (the **Amendment**). The Amendment was submitted to parliament and is subject to further changes. These regulations constitute a compromise between the possibility of wind energy development and the needs of local communities.

The liberalisation of onshore wind farm location rules is one of the "milestones" included in Poland's National Recovery Plan, which was agreed on with the European Commission and outlines how Poland intends to spend EU post-pandemic recovery funding.

The first significant change introduced by the Amendment is the liberalisation of the controversial so-called 10H rule, which forbids the construction of onshore wind farms within a distance of ten times the height of a turbine from residential buildings (**the 10H distance**).

Under the Amendment, communities will be able to modify the minimum distance of turbine locations from residential buildings based on the provisions of the local zoning plan and reduce it, but to no more than 500 meters. The basis for determining the distance of a wind farm from residential buildings will be, among others, the results of the strategic environmental impact assessment (the **SEA**) carried out under the local zoning plan. The SEA analyses the impact of noise emissions on the environment and the health of inhabitants. The same minimum safety distance will apply to new residential buildings in relation to an existing or planned wind farm. Importantly, the commune authorities will not be able to refuse to prepare the SEA for a local development plan that includes a wind farm.

At the same time, it is worth noting that communities also have the right to specify in the local zoning plan the minimum distance of turbine locations from residential buildings above the 10H distance and thus prevent the development of wind farms in the area covered by such local zoning plan.

In addition, under Article 4a of the Amendment, it will be forbidden to locate wind turbines in the vicinity of extra-high voltage transmission lines. The distance between the turbine and the line will not be smaller than three times the diameter of the turbine rotor or twice the maximum height of the turbines, whichever is greater. To protect the most valuable natural areas, it will also be prohibited to build wind farms in national parks, nature reserves, landscape parks and Natura 2000 areas. At the same time, the Amendment maintains the obligation to keep a minimum distance between wind turbines and national parks (10H) and nature reserves (500 meters).

II. Impact on existing project and pending proceedings

The provisions of the local zoning plans (as well as decisions and permits regarding wind farms issued before the Amendment comes into force) will remain in force. On their basis, it will be possible to implement individual wind farm projects if they meet the requirements of the minimum distances from residential buildings adopted in the Amendment.

Under Article 15 of the Amendment, the provisions introduced by the Amendment will be applied to proceedings conducted in relation to wind farms regarding the issuance of building permits and environmental decisions initiated and not completed before the Amendment comes into force. However, the distance requirements between wind farms and extra-high voltage transmission lines introduced in Article 4a will not apply to these proceedings.

III. Additional social participation in the process of developing a local zoning plan

The amendment also provides for a possibility of increased social participation in the process of developing a local zoning plan for the location of the wind farm. Increased participation would be implemented by organising a total of three consultation rounds:

- a) the first within 30 days of announcing the decision to start developing the plan, containing at least one public discussion;
- b) the second one after the draft plan has been presented, containing at least one public discussion; and
- c) the third one to be held one month after the end of the plan presentation period, when residents will be able to re-express their opinion on the project.

Meetings will have to be held both face-to-face and remotely, but the head of the commune, mayor or president of the commune will have the right to refuse to organise face-to-face meetings during the period of the epidemic threat (such as COVID-19).

During the planning period, additional powers were also granted to residents of neighbouring municipalities located at a distance of less than ten times the height of the planned wind turbines. These citizens have the right to participate in the draft local zoning plan, and the head of the commune, mayor or president of the commune adopting the plan will be obliged to inform them about the commencement of the procedure.

If the distance of the wind farm from the residential building is less than ten times the total height of the wind farm (10H) and extends to the area of the neighbouring commune, the local plan must also be prepared by the nearby commune for the area located on its territory, which is at least within this 10H distance.

IV. Possibility for investors to cover the costs of preparing local zoning plans

According to Article 6g of the Amendment, an investor in a wind farm project may undertake, by way of an agreement concluded with a municipality, to bear the costs of preparing or changing a study or local plan in whole or in part, to the extent necessary to implement the wind farm.

V. Certification of entities authorised to perform activities and service inspections of technical elements of wind farms and keeping a register of entities

The newly proposed chapter 2a defines the rules of safe operation for technical elements of a wind farm. Article 8a clearly indicates that the operator of the wind farm is responsible for the operational safety of its technical elements. The operator of a wind farm with a total height of at least 30 meters or a total installed electrical capacity of at least 100 kW secures the service and maintenance of the technical elements of the wind farm carried out in accordance with the recommendations and frequency specified in the technical documentation and operating instructions for the wind farm. Activities and service inspections of technical elements of a wind farm are performed by an entity that has been entered in the register of entities performing activities and service inspections of technical elements of a wind farm (the **Register**). The Register will be kept by the President of the Office of Technical Inspection (the **OTI**).

The OTI will periodically certify (every five years) and verify the competences and resources of the entity providing technical maintenance services for the technical elements of a wind power plant, taking into account: employed staff, their competences and authorisations to perform specific service activities.

Financial penalties for noncompliance with requirements for performing service inspections of technical elements of wind farms

Under the new section 2b of the Amendment, an entity operating a wind farm with a height of at least 30 meters or a total installed capacity of at least 100 kW that does not comply with the obligation to subject the technical elements of the wind farm to service inspections carried out in accordance with the recommendations and frequency specified in the technical documentation is subject to a financial penalty in the form of an administrative decision issued by the President of the Energy Regulatory Office (the **ERO**). The maximum penalty amount is 5% of the entrepreneur's income earned in the previous tax year resulting from the activity licensed or performed on the basis of an entry in the register of regulated activities.

When determining the fine amount, the President of the ERO takes into account the importance and circumstances of the violation of the law, the degree of involvement of the party on which the administrative fine is imposed, as well as its previous behaviour and financial capabilities. The President of the ERO may refrain from imposing a fine if the seriousness of the infringement is negligible and the party has ceased to infringe the law or has fulfilled its obligations.

Entities on which the President of the ERO has imposed a fine may appeal to the Court of Competition and Consumer Protection in Warsaw within two weeks from the date of its delivery.

VI. Changes relating to the FIT/FIP and CfD systems

The Amendment will also set out a new deadline for the start of sales of energy in the FIT/FIP and CfD systems established under the Act on renewable energy sources. The possibility of extending the deadline for fulfilling the Producer's obligation to sell electricity for the first time was introduced due to COVID-19 and is currently 12 months. Under the Amendment, this period may be extended by a maximum of 18 months. If the current 12 month period does not expire before the entry into force of the Amendment, the owner of the wind will have to submit an application to the ERO for its extension to 18 months within 90 days from the entry into force of the Amendment, otherwise this right will be forfeited.

VII. Changes enabling construction of the PV plants on the roofs

It is also worth mentioning that the Amendment will facilitate the construction of solar farms on the roofs of buildings. According to Article 4 point 3 of the Amendment, if the local development plan allows any type of construction, it is also allowed to build PV plants on the roofs of buildings in this area, unless the local zoning plan explicitly prohibits the location of such installations on the roofs.

VIII. Benefits of the liberalisation

The regulatory impact assessment indicates that the amendment will result in the construction of new capacities from 6 GW (conservative scenario) to 10 GW (progressive scenario) by 2033. The first megawatts are expected to flow into the grid in 2024-2025.

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