

Poland: Offshore Wind Bill published by the Government on 15 January 2020

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Part 1: Publication of the Offshore Wind Bill and Next Steps

After many months of deliberation, on 15 January 2020, the Ministry of State Assets published the long-awaited Offshore Wind Bill, the publication of which marks the beginning of the legislative process entailing a 30-day stakeholder feedback period, which is due to end on 14 February. The Offshore Wind Bill (also “the Bill”) is intended to govern offshore wind investment, as well as defining the support mechanisms for such projects.

Offshore wind farms in Poland are meant to lead Poland’s energy transformation for decarbonisation by increasing the share of renewables in the energy mix, as well as significantly contributing to minimising the risk of capacity shortages. The Polish government has targeted a 15% share of renewables in its energy mix for 2020 (which in all likelihood will not be attained). By 2030, an ambitious 21% share is targeted. It is noteworthy that Poland has only recently embarked on developing the Baltic Sea potential for offshore wind farms and that no offshore wind farm has, as of yet, been completed in Poland, although several projects owned by domestic and international energy operators are in the pipeline (we recently took a look at the prospects for offshore wind in Poland and the latest developments for this technology in the Polish energy sector in our paper titled [“The Polish Baltic Sea Offshore Wind Potential: When Will the Dedicated Support Scheme Mechanism for Offshore Wind in Poland Be Presented?”](#) in May last year). The Baltic Sea potential for offshore wind has been estimated to be approx. 10GW and the Offshore Wind Bill provides for a 25-year bilateral CFD support mechanism (compared to only 15 years for other renewable technologies) with a fixed price set by the government. The CFDs are to be awarded more than 9 GW by 2028 in two phases:

1. The first phase – administrative decisions (planned for 2020 – 2022) plans awarding CFDs to projects at the most advanced stage of the investment process (i.e. those which, amongst other criteria, have a connection decision with national grid operator (PSE)) by way of an administrative decision issued by the President of the Energy Regulatory Office (ERO) after confirming that the given project meets the eligibility criteria. Due to the non-competitive nature of the process, all the support decisions will be notified to the European Commission (EC) and will be implemented only upon the EC’s approval, should the amount of capacity procured be less than 4.6 GW.

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2. The second phase – auctions for a further 5GW capacity (increased by the not utilised remaining capacity from Phase I above) to be competitively auctioned across at least three auctions between 2023 and 2028.

We discuss these phases in more detail in Part 2 of this update below.

Part 2: The CFD Support Mechanism and the Planned Two Phases for Offshore Wind Farms Support

One of the most crucial elements, of interest to operators and investors, is the proposed support mechanism for offshore wind farms. The [Polish Offshore Wind Bill](#) implements the contract for difference (CFD) model, used in the UK, Holland and also in the existing Polish Renewable Energy Sources Act. Offshore wind farms electricity generators (i.e. the offshore wind farm owners) admitted to the support system will be granted the right to cover the so-called negative balance – which practically means covering the difference between the market energy price and the price enabling generators to cover the offshore electricity generation costs. In order to avoid the generation gap, the Offshore Wind Bill differentiates two phases of offshore wind farms support.

During Phase 1 of the system, i.e. by 31 December 2022, support will be granted by way of an administrative decision, though only for offshore windfarms of the cumulative capacity of 4.6GW. As of 2023, support will be provided through competitive auctions.

The difference between both phases will only concern the effective period and the selection system of offshore windfarms entitled to the right to cover the negative balance (CfD). However, the project completion terms and conditions, pertaining to the technical and economic issues of offshore wind farm construction and operation investments will remain identical in both cases.

(A) Phase 1 of the Support System in Effect Until the End of 2022 – Administrative Decisions up to 4.6 GW

During Phase 1, in effect until the end of 2022, the right to cover the negative balance will be granted by way of an individual administrative decision issued by the President of the ERO. This date has been determined by EU guidelines and regulations pertaining to public assistance. Only projects that are the most advanced in terms of the investment process will be eligible for participation in Phase 1. The Offshore Wind Bill provides for wind farms of the maximum capacity of 4.6GW to be eligible for participation in Phase 1 of the system support mechanism.

Priority in granting the right to cover the negative balance will be given on the first-come-first-served basis. The applicants will be required to produce the following documentation to the attention of the President of ERO: (1) transfer or distribution grid interconnection agreement; (2) final environmental decision; (3) final permits for erecting and operation of artificial islands, structures and devices; (4) construction schedules in terms of subject-matter and financial issues enabling completing the project in a timely fashion; and (5) plan of local materials and services participation.

Negative balances will be settled using the price set out in the Regulation of the minister with jurisdiction over energy matters, announced for the subsequent calendar years until 2022.

Determining the prices several years ahead in advance is meant to assure investors that the economic conditions will be stable, so that they can make a rational investment decision.

Prior to applying for the right to cover the negative balance, the applicant must seek confirmation, issued by the President of ERO, that there is an “incentive effect”.

Granting the right to cover the negative balance during Phase 1 of the system (conferred outside the competitive procedure) will be subject to individual notification of the European Commission and its disbursement will only be possible once the Commission has issued the decision acknowledging such support as permissible.

(B) Phase 2 in Effect From 2023 – Support Mechanism – “Pay-as-Bid” Auction

During Phase 2 of the offshore wind farm support system, winners will be singled out by way of an auction. During the auction, each generator will enter one offer, undisclosed to other auction participants. The auctions will be settled using the offer price (“pay-as-bid”), with the lowest winning. The auction results will be deemed positive if (1) at least three offers have been entered; (2) an offer does not exceed 100% of the total maximum value of the auction announcement; and (3) an offer does not exceed 90% of the total capacity of all the offers entered.

All offshore wind farms, regardless of their technical parameters, will be competing within one auction basket. The auctions will be announced, conducted and resolved by the President of ERO.

The first auction dates and their GW capacities have been set out in the Offshore Wind Bill and they are as follows: in 2023 – the difference between 4.6 GW and the total capacity of the offshore wind farms that have been approved for Phase 1 support until, and inclusive of, 2022. The 2025 auction – 2.5 GW – and the 2027 – 2.5 GW. The unused capacity from previous auctions will be added to the maximum capacity available during subsequent auctions. The auctions will be held on an electronic platform (as is the case with the onshore wind farm and PV auctions held by the President of ERO).

The minister with jurisdiction over energy matters, by way of a regulation, will determine the maximum asking price of a MW/h.

Part 3: Common Rules for Offshore Wind Farms Approved for Phase 1 and Phase 2 Support

Apart from the above-mentioned manner of supporting offshore wind farms in terms of then such support has been granted, the remaining rules are the same for all offshore wind farms within the support system:

Support period – The maximum offshore wind farm support period will be 25 years starting from the date of first energy generation and release to the grid in order to cover the negative balance.

Support amount – The support amount is equal to the product of the anticipated electric capacity (MW) of an installed offshore wind farm and 100,000 hours (during the above-mentioned cut-off 25-year period).

First generation and device age – The entities that have been granted the right to cover the negative balance will be obliged to generate electricity and release it to the grid in order to cover the negative balance within seven years from (for Phase 1) the European Commission’s issuing of the decision approving public assistance for a given offshore wind farm and from (for Phase 2) the auction results announcement. Under extraordinary circumstances, not attributable to the generator, this deadline may be extended by way of an administrative decision issued by the President of ERO.

Further, the offshore wind farm devices must have been manufactured no earlier than six years prior to first energy generation and must not have been amortised by another entity beforehand.

Calculating and settling negative balance – In any case, negative balance will be settled in the same manner as within the currently functioning RES support system (e.g. for onshore wind farm or PV auction system participants). Negative balances will be settled by the state Settlement Administrator and it will be done on a monthly basis.

The offshore wind farm energy price, arising from the decision issued by the President of ERO during Phase 1 and offered in the auction during Phase 2, will be decreased by the investment assistance amount. Thus, determined price will be subject to annual CPI adjustment.

The difference between the electricity market price (determined based on market data) and the offshore wind farm energy price determined in the section above will constitute the negative balance. If the balance is positive, its value will be settled during subsequent periods, and if there is a surplus after the support period, the offshore wind farm owner will be obliged to return such surplus to the Settlement Administrator in six-month instalments.

In order to facilitate a more adequate alignment of the support obtained, as well as to create an incentive to generate more electricity for the most competitive type of trading – the Energy Exchange – the Offshore Wind Bill provides for a possibility for the generator to choose the reference value taken into account when calculating the negative balance. Offshore wind farm owners will be able to choose between (1) selling all the energy on the Energy Exchange and applying the real prices while calculating the negative balance or (2) selling the energy outside the Energy Exchange and applying the offshore wind farm exchange index.

Offshore wind farms are also protected against the inability to generate electricity, through no fault of their own, due to the transfer grid operator's instructions arising from grid limitations. That being the case, the PLN 0 reference price (index) has been adopted.

Annual Tax on Each Offshore Wind Farm MW

The Offshore Wind Bill provides for a special tax, subject to annual CPI adjustment. Offshore wind farm electricity generators would pay an annual tax of PLN23,000 for each licensed MW.

Part 4:

(A) Grid Interconnection and Power Outputs

The Offshore Wind Bill provides for certain modifications to relations with grid operators. Obviously, the offshore wind farm owner executes an interconnection agreement with the grid operator, whereby the terms and conditions of the interconnection and the date of first energy release are determined. Nonetheless, the Bill also stipulates that if the offshore wind farm owner should exceed this deadline, the grid operator may not terminate the interconnection agreement under the following circumstances: legislation changes, grid security, grid malfunction, offshore wind farm technical malfunction not attributable to the offshore wind farm owner, as well as force majeure. If the energy release deadline is shorter than that arising from the individual decision issued by the President of ERO (Phase 1) or from the auction results (Phase 2), the interconnection agreement must be amended accordingly.

The offshore wind farm owner is obliged to equip the wind farm with measurement and settlement devices in order to calculate the amount of energy generated.

Construction of offshore wind farm power output infrastructure is considered a strategic investment (which allows for certain measures expediting such investments) and, further, it is the entity generating energy from an offshore wind farm (the offshore wind farm owner) that is the investor, rather than the grid operator.

One of the assumptions of the Bill is also that the grid operator may have an option (but not a statutory obligation) to purchase the part of the offshore wind farm power output infrastructure. Such agreement may be executed prior to the offshore wind farm owner completing the interconnection infrastructure. This means that the offshore wind farm owner may seek a cost reimbursement in that regard (which will, at the same time, be deemed as investment assistance decreasing, accordingly, the remuneration due for the contracted offshore wind farm energy).

(B) Simplified Permitting and Artificial Islands

In order to avoid the investment process being ground to a halt due to lengthy procedures and appeals, the Bill provides for certain modifications expediting standard administrative and appellate procedures. Briefly, the following decisions must be issued in order to pursue an offshore wind farm investment and they are required forthwith: (1) environmental assessment; (2) water permit; (3) building permit; and (4) use permit. The decisions referred to in (1) through to (3) must be issued within 90 days. Appellations should be processed within 14 days, barring appellations of building permits, which ought to be processed by the authority within 60 days. The appellations themselves ought to be substantive, i.e. they must include the allegations, the nature and the extent of the claim and the corroborating evidence. This is meant to prevent third-party appellations with the view to merely stall the issuance of final decisions.

When a decision is only partially faulty, both the superior authority and the administrative courts will be unable to repeal the decision in its entirety, nor to render it invalid in every regard.

Administrative courts have also been prompted by statute to expeditiously process the cases. First instance administrative courts are obliged to process the cases within one month following file receipt and to address the appeal, while second instance administrative courts have two months (following the lodging date) to process a cassation complaint. These are truly short deadlines.

(C) Local Supply Chain – Anticipated Share of Local Materials and Services

The Bill will impose two new obligations on Offshore Windfarms Generators (previously unknown to onshore windfarms and PV generators) with the view to stimulate local supply chain growth (industries supplying the devices and services related to offshore windfarms construction). The government expects the development of the offshore wind energy sector to give the Polish economy certain momentum, due to its capital intensity.

The Offshore Windfarms Generators will also be obliged to provide the projected share of domestic materials and services in the wind farm construction and operation process, as well as to liaise in terms of technology with interested suppliers and contractors, and thereafter, to file annual projections implementation reports.

The projections will have to include, among others, information regarding the expenditures incurred

by the Offshore Windfarm Generator in Poland, a description and an estimated number of jobs to be created, a description of research and innovation initiatives associated with the project and a description of measures taken in Poland toward human resources and skills development.

Part 4: Going on €15 billion Polish Offshore Wind Market

It goes without saying that the Offshore Wind Bill announcement is a milestone on the way to the first Baltic Offshore Windfarm. Not only is the offshore wind market important to the Polish energy mix, but it has also been long awaited by domestic and international sponsors and financial investors. Let us remember that the entire program has been initially valued at €15 billion.

The Bill and the statement of grounds is more than 100 pages long. This entry presents its most crucial features. Overall, each item could be a point of departure for a separate study, which is why we will be addressing the issue in greater detail in future posts.

Within 30 days following the Offshore Wind Bill announcement (i.e. in mid-February), the interested entities will be able to voice their remarks during social consultations. We are now at the beginning of the legislative process and there are surely several months of law-making efforts ahead of us, just as there are bound to be several turning points (none of which, hopefully, will be a U-turn) before the final version of the Offshore Wind Bill is ready. We will keep you posted.

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