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Quick Guide to the 2023 Polish Auction System for Renewables

Onshore wind energy 2023

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Contents

Introduction

Dear Readers,

In December 2022, auctions were held to sell energy i.a. from new onshore wind installations. PLN 1.7 billion was contracted in the 2022 auction for new large wind and PV. According to Energy Market Agency's data as of March 2023, the installed capacity of wind farms already amounts to 8 573.7 MW.

Poland has thus become one of the key onshore wind farm construction sites in this part of Europe. The total installed capacity from renewables currently amounts to over 23.8 GW, out of which approximately 36 % are wind farms (as of March 2023, according to information provided by the Energy Market Agency). The government's aodption of the amendment to the Act on Investments in

Wind Power Plants, by liberalizing the so-called 10H distance rule makes the future of the development of new wind projects bright. What is more, according to the pending amendments to the Act on promoting electricity generation in offshore wind farms adopted at the beginning of 2021, 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. If these changes were to be adopted, auctions would be held in 2025, 2027, 2029 and 2031, and the total maximum installed capacity for which the right to negative balance can be granted in auctions will be 12 GW. The National Energy and Climate Plan 2021–2030 expects the offshore wind technology to be of key importance in bringing the country closer to meeting the renewables' 21–23% share in electricity generation.

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 the collapse of the fuel sector, with gas at the forefront. In these realities, the need for Poland to pursue energy independence and zero-carbon by increasing the participation of RES technologies in the energy mix becomes all the more important. Such an opportunity is provided by the further intensive development of installations producing clean electricity from wind in the Polish energy mix.

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

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Partner
DWF

The condition of wind energy in Poland

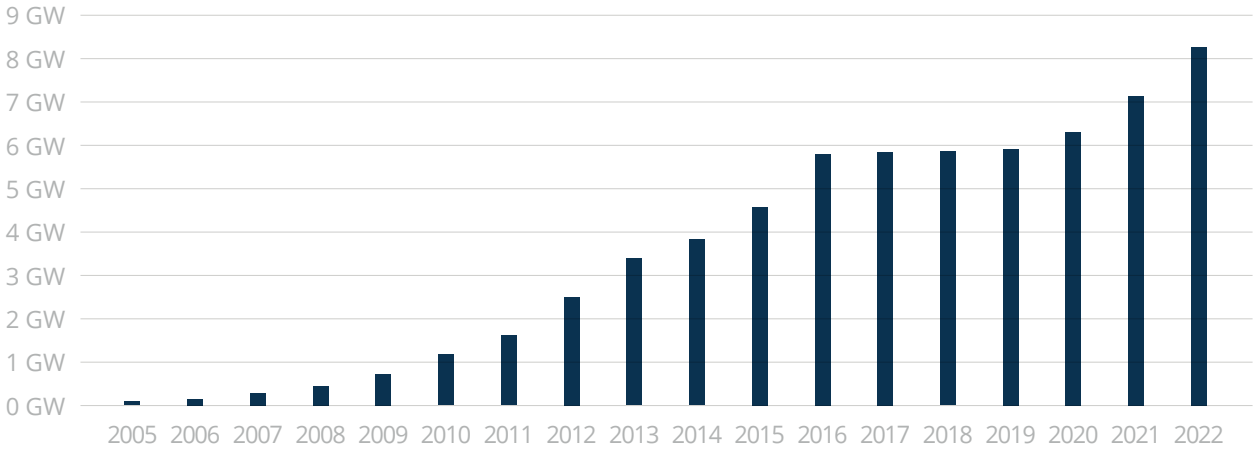
Wind energy constitutes an increasingly vital element of the Polish energy mix. Many indicate that its role in the coming decades will increase further. Full exploitation of the onshore and offshore wind potential will enable in the full transformation of the electricity sector towards zero-carbon.

The National Power System in Poland, with total installed capacity exceeding 61.4 GW, is based primarily on coal-fired sources. The electricity sector is dominated by large baseload power plants and CHPs that use fossil fuels. In February 2023 their total share in the NPS installed capacity reached 59.3%. 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 23.8 GW, of which approximately 36 % in wind (as of March 2023, according to information provided by the Energy Market Agency).

On 20 February 2023 we experienced a record of electricity production from wind. At that time, wind farms were operating at full capacity and at their peak produced 7832.8 MWh of electricity.

Diagram No. 1 | Wind energy development in Poland since the introduction of the support scheme



Source: The Energy Regulatory Office
https://www.ure.gov.pl/pl/oze/potencjal-krajowy-oze/5753,Moc-zainstalowana-MW.html
https://www.are.waw.pl/badania-statystyczne/wynikowe-informacje-statystyczne#2022-rok

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 10 H 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 9 December 2022 investors obtained aid for the construction of a further 245 MW of wind capacity. This value was due to the exhaustion of projects that could participate in the auction, connected with limitations of 10 H principle.

The minimum price at which energy was sold for onshore wind farms in the December 2022 auction was 150 PLN/MWh.

Diagram No. 2 | **NECP scenario**: installed capacity by source*
Elextricity mix – installed capacity

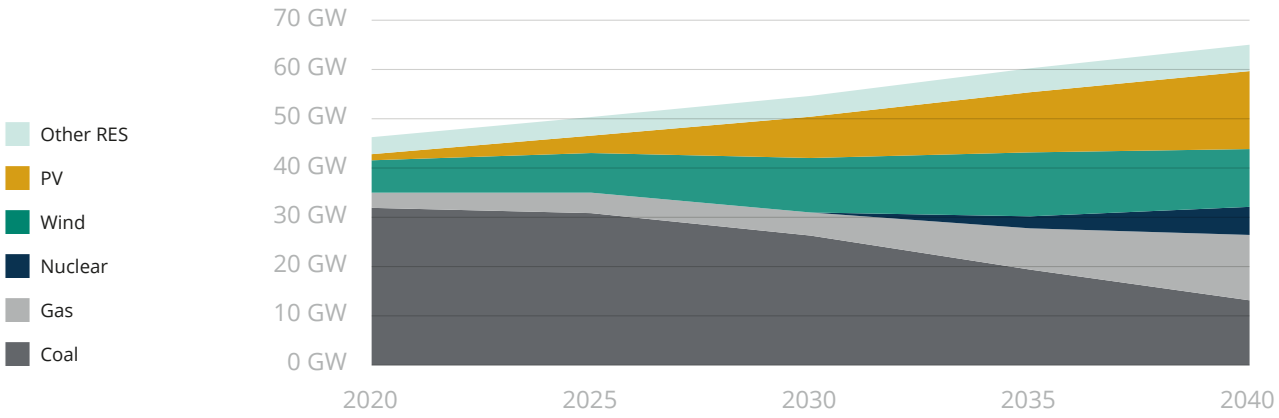
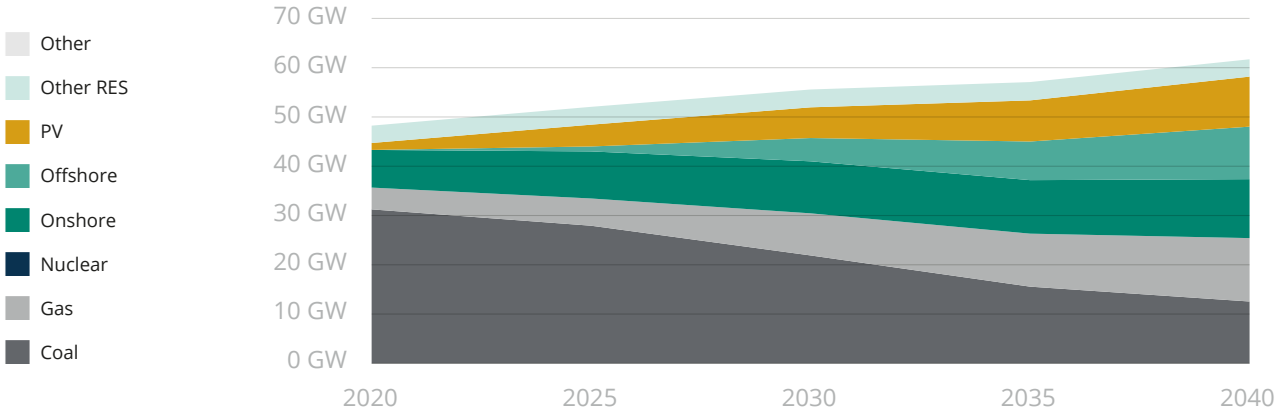


Diagram No. 3 | **PWEA scenario**: installed capacity by source**
Elextricity mix – installed capacity



* Onshore and offshore wind are not shown separately in the draft NECP.

** Onshore and offshore wind is not included separately in the draft NECP. The division has been estimated by PWEA based on the draft energy policy published a month before the NECP.

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 31 December 2027. In the face of increasing prices of electricity from conventional sources, whose production is subject to high CO_2 emission allowance costs, on 8 and 9 December 2022 auctions were held for the sale of renewable energy for 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 liberalised 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 8.6 GW.

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 forinexpensive, 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 3.8 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 8 GW by 2040.

The Energy Policy of Poland until 2040 (PEP 2040), 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.

In March 2022, the government adopted the assumptions for updating PEP 2040, which will assume that by 2040, approximately half of electricity generation will come from renewable sources.

Importantly, according to the announced key assumptions of the third forecast scenario of PEP 2040 (as of April 2023), onshore wind power is expected to continue to grow to 14 GW of capacity in 2030, and to 20 GW in 2040.

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

Photo: EDF Renewables Polska, wind farm Górzyca.

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 long-term stability for investors while ensuring competition between companies.

Adoption of this Act is 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 very 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).

Photo: Grupa TAURON, wind farm Majewo, developed by TAURON Zielona Energia in 2022

Until recently, investors had applied for location permits for 11 areas provided for in the Maritime Spatial Plan for Polish Sea Areas. Most of them were applied for by a dozen or so investors each. With regard to four of them, the winning entities from the PGE Group were selected in early 2023 (the results are not yet final). At the end of May 2023, the Ministry of Infrastructure published the results of the remaining six proceedings to obtain location permits for new wind farms in the Baltic Sea, related to the so-called phase II of development of offshore wind projects in Polish waters of the Baltic Sea. The results of these proceedings were dominated by two Polish entities, PGE Group and Orlen Group, which scored the highest number of points in the respective awarding proceedings (results are not final). 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 2033.

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 NECP; fulfil RES-related targets; reduce CO_2 emissions at a faster pace than it is planned by the Polish government and contain the escalation of electricity costs.

Auctions in 2022

Last RES auctions were held on December 2022. The auction for the photovoltaic and wind installations up to 1 MW was held on 8 December 2022, while on 9 December 2022 was held on auction for installations above 1 MW

The auctions was 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 3.8 billion has been allocated for auctions in 2022 for photovoltaic and wind installations up to 1 MW. In the corresponding regulation issued for the 2021 auction, 14.7 TWh of energy with a value of PLN 5.3 billion has been allocated for this basket.

Meanwhile, for the photovoltaic and wind installations above 1 MW, according to aforementioned regulation, 11.25 TWh worth PLN 3.6 billion was allocated for sale. Similarly, in the same basket for the 2021 auction, the volume of energy amounted to 38.76 TWh worth PLN 10.7 billion.

According to a summary of the auctions held in December 2022, the President of the ERO estimates that the auctions will contribute to nearly 732 MW of new generation capacity, including:

- 486 MW in photovoltaic installations (150 MW in installations with an installed capacity up to 1 MW and 336 MW in installations with an installed capacity of more than 1 MW),
- 245 MW in wind installations (above 1 MW).

Diagram No. 4 | 2022 Auction. New installed capacity as a result of auctions held in December 2022.

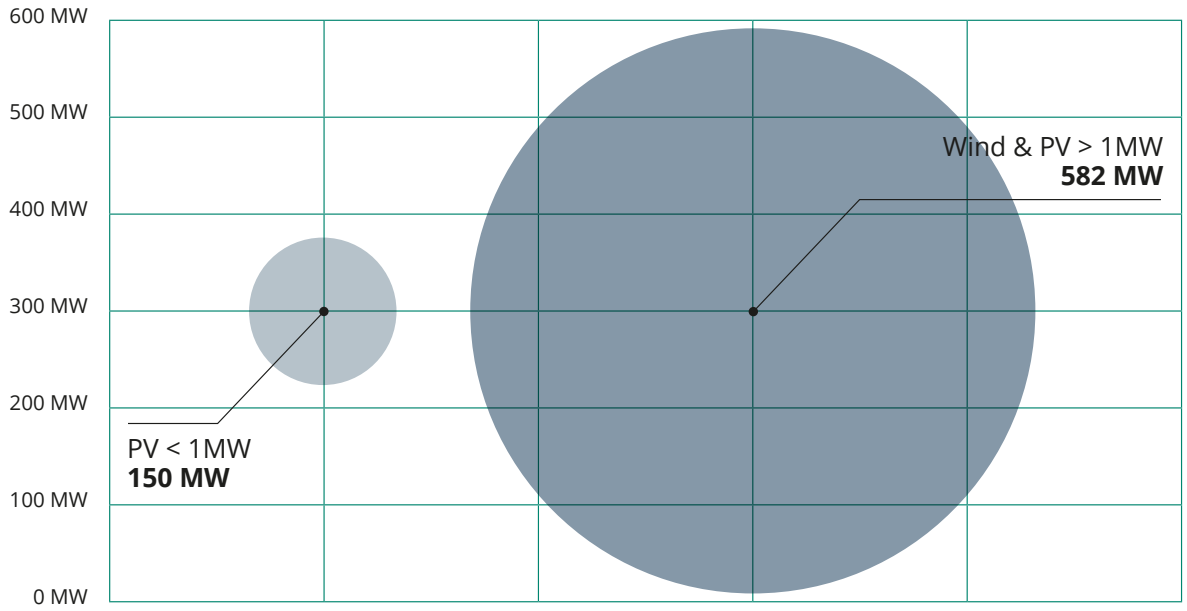


Photo: EDF Renewables Polska, wind farm Górzyca

Last year's auctions allocated slightly more than 34 TWh of electricity from renewable energy sources with a total value of more than PLN 14.3 billion for sale, but as a result of the auctions, a total of only around 8.5 TWh (25 %) of electricity worth less than PLN 2.5 billion (17 %) was contracted.

Table No. 1 | Auction budgets 2022 description for each RES technology and comparison to year 202111

Technology	Cap.	2022 budget		2021 budget		Change	
		(TWh)	(PLN mld)	(TWh)	(PLN mld)	(%vol.)	(%vol.)
Wind & PV	< 1MW	11.25	3.825	14.7	5.292	−23%	−28%
	> 1 MW	11.25	3.6	38.76	10.748	−71%	−67%
Non-agricultural biogas, biomass, thermal waste treatment installations	< 1 MW	1.11	0.609	0.225	0.107	+383%	+469%
	> 1MW	1.687	0.927	10.68	5.249	−84%	−82%
Agricultural biogas	< 1 MW	0	0	0	0	0	0
	> 1 MW	5.775	3.87	1,8	1,206	+221%	+221%
Hydropower, bioliquids, geothermal energy	< 1 MW	0.975	0.509	0.27	0.151	+263%	+237%
	> 1 MW	2.04	1.038	1.08	0.578	+89%	+80%
Hybrid installations	< 1 MW	0	0	0.394	0.242	−100%	−100%
	> 1 MW	0	0	1.182	0.704	−100%	−100%
Existing installations	> 1 MW	0	0	0.5	0.335	−100%	−100%
Total		**34.1**	**14.378**	**69.59**	**24.612**	**−51%**	**−42%**

Source: own study, pursuant to the Regulation of the Council of Ministers of September 27, 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) and the Regulation of the Council of Ministers of December 16, 2020 regarding the maximum volumes and values of electricity from renewable energy sources that might be auctioned in 2021 (Journal of Laws 2020, item 2363).

When did the last auctions take place?

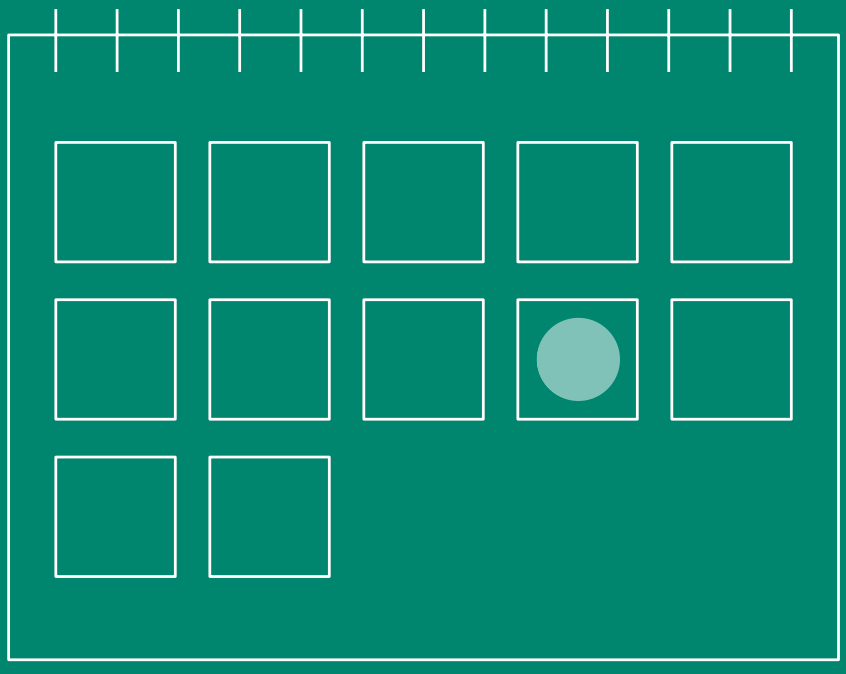
The most recent auctions for onshore wind and PV took place on 8 and 9 December 2022 (respectively for installations up to and above 1 MW capacity).

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 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 onshore wind, solar as well as biogas, biomass and waste thermal treatment (including CHP) 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 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 service 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 quasi 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. 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 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.

Currently, due to the amendment of the RES Act of September 17, 2021, three-year settlement periods for the positive balance have been introduced with a return deadline of up to 6 months after the end of the period. This chance applies both to future auctions and to those producers who have already won an auction. As a consequence of coming into force, the amendment mostly affects those producers whose auction bids provided for prices lower than current market prices of energy according to TGE Base.

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

What energy producing equipment can be installed?

Photo: EDF Renewables Polska, wind farm Górzyca

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. Under the recently amended provisions of the RES Act, this period has been extended to 33 months for PV installations. This is detailed in the table below.

Table No. 2

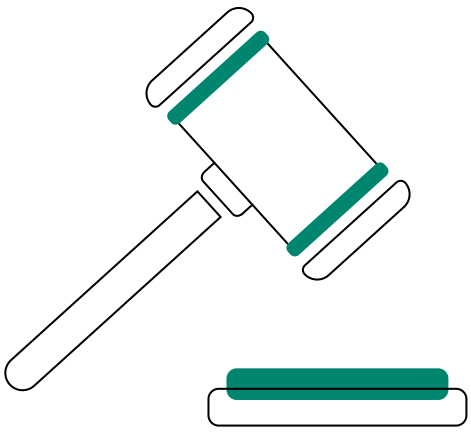
Category of renewable installation	Equipment not older than
Onshore wind	33 months
Photovoltaics	33 months
Offshore wind	72 months
Biomass	42 months

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	72 months 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. However, 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 hazard), 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.

The President of the ERO, at the request of a producer, shall 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 hazard).

In the request, the producer shall provide, 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 is 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 may exercise the right to extend the spoken periods. The application must be submitted by the producer at the latest 30 days before the deadline for fulfilment of the obligation.

The existing right to change the deadline for the first sale of energy (as per art. 17(3) of the Act of 19 July 2019 amending the RES Act and certain other acts) and the new right to extend the deadlines due to the COVID-19 pandemic are non-competitive with each other. That means that the producer may 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 provided the amendment to the RES Act, on the basis of which power companies are 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, entered into force (Journal of Laws 2022, item 2243, as amended). The Act has been amended several times.

The act requires 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 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 is the amount of financial resources to be transferred by an electricity generator and an electricity trading company. The amount of the contribution to the Fund is the product of the volume of electricity sales and the positive difference of the volume-weighted average market price of electricity sold and the volume-weighted average price limit of electricity sold on a given day.

The price limit for electricity generators and trading companies is 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 are:

- 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. currently:
  - 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 is the price indicated in the auction bid (indexed by CPI).

The obligation to make contributions to the Fund shall be exercised in respect of the period from1 December 2022 to 31 December 2023.

Photo: Grupa TAURON, wind farm Majewo, developed by TAURON Zielona Energia in 2022

Excluded from the above obligation are generators producing electricity in a RES installation covered by the auction system, but only to the extent of the volume of electricity sold under this support system. This means that for the volume of electricity coming from an installation covered by the auction system, but not sold under this system, the generator is subject to the price cap settlement obligation.

The broad definition of the market price of electricity, taken into account for the calculation of price cap settlement to the Fund is important. This price is not only the net price of electricity in PLN/MWh, as indicated in the Power Purchase Agreement but is also determined within the framework of a contract related to the sale of electricity, including in particular financial instruments or guarantees of origin, in which additional monetary settlements depend on the volume or value of electricity sold. A broad understanding of the market price creates the risk that this price, and thus the amount of the price cap settlement to the Fund, will be calculated with reference to the generator's total revenues related to the sale of electricity, including the price of electricity or from the sale of guarantees of origin. At the same time, it is irrelevant whether the guarantees of origin are sold within the framework of the PPA or on the basis of another agreement, with another buyer. Indeed, from the perspective of the statutory rules for calculating the market price, what matters is whether (i) an additional monetary settlement is made by the generator, and whether (ii) this settlement is connected with the quantity or value of the electricity sold.

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 Energy Regulatory Office 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 2022 auctions

The last auctions for wind and solar projects took place in December 2022. 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 3.8 billion. The reference price in this basket for wind installations was 340 PLN/MWh, while for photovoltaic installations – 375 PLN/MWh.

All auctions held in December were for new installations. PV projects dominated the so-called "small basket" for wind and photovoltaic projects up to 1 MW. 88 producers joined the auction, placing a total of 197 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 156 offers submitted by 68 generators, with the total value of only PLN 434 million (which constitutes 11% of the value of energy allocated for sale).

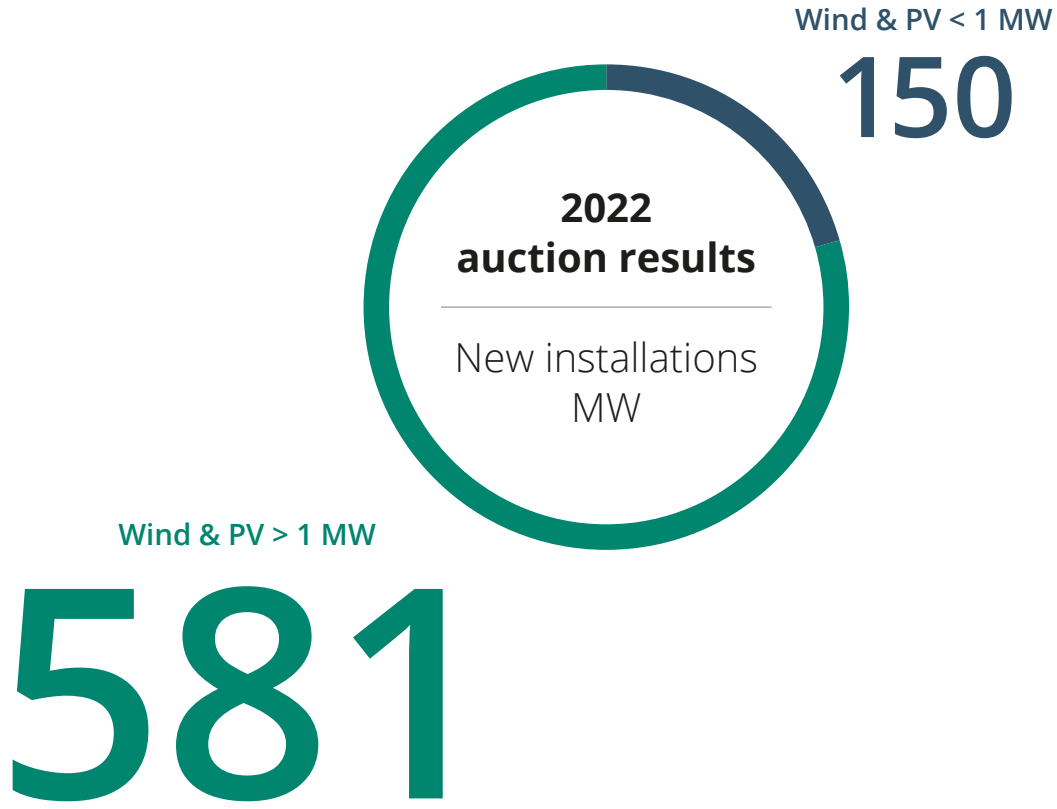
The minimum price at which energy was sold was 244.8 PLN/MWh (for comparison, back in December 2021 the minimum price at which energy was sold was 219 PLN/MWh). On the other hand, the maximum price at which energy was sold was 327.7 PLN/MWh (for comparison: in December 2021 it was 278.9 PLN/MWh). It means that the price of energy proposed by PV generators has increased.

As a result of the auction, almost 1.6 TWh were contracted. The winners included generators from the Sunly holding, Pro Vento Energia, PCWO Energy and Cambria Energy.

In contrast to the PV-dominated auction dated 8 December 2022, the auction dated 9 December 2022 for wind and photovoltaic projects with a capacity above 1 MW, had a PV installed capacity of around 57.8% among the winners. The possible amount of energy to be sold in this basket was 11.25 TWh and its value was over PLN 3.6 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 295 PLN/MWh, and for PV installations – 355 PLN/MWh. The auction was joined by 51 producers, who submitted 70 bids in total. As a result of the auction slightly over 6.4 TWh of energy of total value exceeding 1.7 billion was sold. As a result of the auction, photovoltaic installations with the capacity of approx. 336 MW and onshore wind farms with the capacity of approx. 245 MW may be created. Minimum price at which the energy was sold in this auction basket was 150.00 PLN/MWh, while the maximum price was 320.00 PLN/MWh.

The winners included i.a. Pro Vento Energia, Polenergia Farma Wiatrowa Namysłów sp. z o.o., Yevulei Shemesh Renewable Energy Group Ltd. or Afcon Renewable Energy.

Diagram No. 5 | 2022 auction. New Capacities.



Reference prices (maximum bid prices) for different categories of renewables for 2022

Below are the reference prices resulting from the regulation of the Minister of Climate and Environment on the reference price of electricity from renewable energy sources in 2022 and the periods applicable to producers that won the auctions in 2022 (Journal of Laws, item 2247).

Table No. 4

No.	Type of renewables installations	Reference price (PLN/MWh)
1.	Installations with a capacity below 0.5 MW using only agricultural biogas	785
2.	Installations with a capacity below 0.5 MW using only agricultural biogas in high-efficiency cogeneration	920
3.	Installations with a capacity below 0.5 MW using only biogas obtained from landfills	730
4.	Installations with a capacity below 0.5 MW using only biogas obtained from landfills in high-efficiency cogeneration	820
5.	Installations with a capacity below 0.5 MW using only biogas obtained from sewage treatment plants	515
6.	Installations with a capacity below 0.5 MW using only biogas obtained from sewage treatment plants in high-efficiency cogeneration	640
7.	Installations with a capacity below 0.5 MW using only biogas other than obtained from agricultural biogas, landfills or sewage treatment plants	570
8.	Installations with a capacity below 0.5 MW using only biogas other than obtained from agricultural biogas, landfills or sewage treatment plants in high-efficiency cogeneration	645
9.	Installations with a capacity below 0.5 MW using only hydropower	770
10.	Installations with a capacity not below 0.5 MW and not exceeding 1 MW using only agricultural biogas	715
11.	Installations with a capacity not below 0.5 MW and not exceeding 1 MW using only agricultural biogas in high-efficiency cogeneration	840

Photo: Grupa TAURON, wind farm Piotrków Trybunalski, developed by TAURON Zielona Energia in 2022

No.	Type of renewables installations	Reference price (PLN/MWh)
12.	Large Installations (above 1 MW) using only agricultural biogas	700
13.	Large Installations (above 1 MW) using only agricultural biogas in high-efficiency cogeneration	800
14.	Installations with a capacity not below 0.5 MW using only biogas obtained from landfills	705
15.	Installations with a capacity not below 0.5 MW using only biogas obtained from landfills in high-efficiency cogeneration	800
16.	Installations with a capacity not below 0.5 MW using only biogas obtained from wastewater treatment plants	470
17.	Installations with a capacity not below 0.5 MW using only biogas obtained from wastewater treatment plants in high-efficiency cogeneration	590
18.	Installations with a capacity not below 0.5 MW using only biogas other than obtained from agricultural biogas landfills or sewage treatment plants	525
19.	Installations with a capacity not below 0.5 MW using only biogas other than obtained from agricultural biogas landfills or sewage treatment plants in high-efficiency cogeneration	605
20.	Dedicated biomass combustion installations or hybrid systems	525
21.	Thermal waste treatment installations or dedicated multi-fuel combustion installations	420
22.	Installations with a capacity not exceeding 50 MW in a dedicated biomass combustion installation or hybrid systems, in high-efficiency cogeneration	580
23.	Installations with a capacity higher than 50 MW in a dedicated biomass combustion installation or hybrid systems, in high-efficiency cogeneration	550
24.	Installations using only bio-liquids	520
25.	Installations with a capacity not exceeding 1 MW using only onshore wind energy	340
26.	Large Installations (capacity higher than 1 MW) using only onshore wind energy	295
27.	Installations with a capacity of not below 0.5 MW and not exceeding 1 MW using only hydropower	705
28.	Large Installations using only hydropower	675
29.	Installations using only geothermal energy	515
30.	Installations with a capacity not exceeding 1 MW using only solar energy	375
31.	Large Installations (capacity higher than 1 MW) using only solar energy	355
32.	Small hybrid installations	0
33.	Large hybrid installations	0

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.

https://en.stowarzyszeniepv.pl

DWF in Poland currently consists of over 150 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.

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